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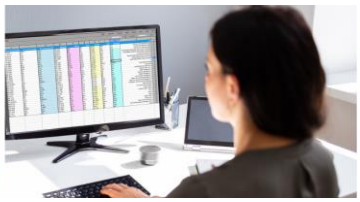


HARM REDUCTION AND OVERDOSE PREVENTION

Fact Sheet

Legality of Dispensing Naloxone to Minors in Illinois

Background

Drug overdose is a nationwide epidemic that claimed the lives of over 100,000 people in the United States in the past year.[1] Opioids, either alone or in combination with other drugs or alcohol, were responsible for approximately 75% of these deaths.[2] Many of those 75,000 people would be alive today if they had been administered the opioid antagonist naloxone and, where needed, other emergency care.[3] 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.[4]

There are many reasons a person under the age of 18 may wish to obtain naloxone. Minors may be in a position to assist in the event of an overdose, either of another minor or an adult. Substance use disorders often develop in adolescence, and around 10% of overdoses nationally occur in youth and young adults below 26 years old.[5] In 2020, 215 out of 2,944 overdose deaths in Illinois occurred in individuals under age 25.[6]

In Illinois, it is permissible for health care professionals or individuals acting under the direction of a health care professional to dispense naloxone to minors in facilities including, but not limited to, hospitals, hospital affiliates, or federally qualified health centers, if they ensure that the minor is provided with certain information. As described below, it is likely also permissible for health care professionals and programs approved by the Illinois Department of Human Services to prescribe or dispense to minors without parental consent.

Summary of relevant minor health care consent laws

Under Illinois law, a minor is a person who has not attained the age of 18 years.[7] Generally, minors cannot consent to medical treatment, and the consent of a parent or guardian is typically required.[8] There are, however, numerous exceptions to this general rule. For example, in emergency situations a hospital, licensed physician, or dentist need not obtain consent if doing so “is not reasonably feasible under the circumstances” without adversely affecting the minor's health.[9] Further, a minor who is married, pregnant, or a parent is considered to have the same legal capacity to act as people of legal age and may therefore consent to their own medical treatment.[10] Additionally, individuals 14 to 17 years old who are “living separate and apart” from their parents or legal guardian regardless of consent of the legal guardian, or who are “unable or unwilling to

return to the residence of a parent, and managing his or her own personal affairs" may consent to certain limited primary care services.[11] These services likely include naloxone prescribing and receipt.[12]

In addition to these status-based circumstances, there are certain relevant condition-related circumstances under which minors may consent to treatment. One such circumstance pertains to any minor 12 years or older who "may be determined to be an intoxicated person or a person with a substance use disorder… or who may have a family member who abuses drugs or alcohol."[13] Illinois law permits such individuals to consent to "health care services or counseling related to the prevention, diagnosis, or treatment of… drug use or alcohol consumption by the minor or the effects on the minor of drug or alcohol abuse by a member of the minor's family."[14] Unless the person furnishing treatment believes that the involvement of the family will be detrimental to the progress and care of the minor, "[a]nyone involved in the furnishing of health services care to the minor or counseling related to [such treatment]… shall, upon the minor's consent, make reasonable efforts, to involve the family of the minor in his or her treatment."[15]

Prescribing and dispensing naloxone to minors

In addition to the situations above in which minors may access naloxone without parental or guardian consent, minors are likely permitted to obtain it pursuant to the Illinois' Drug Overdose Prevention Program (DOPP). Under the relevant law,

> Notwithstanding any provision of or requirement otherwise imposed by the Pharmacy Practice Act, the Medical Practice Act of 1987, or any other law or rule…a health care professional or other person acting under the direction of a health care professional may, directly or by standing order, obtain, store, and dispense an opioid antagonist to a patient in a facility that includes, but is not limited to, a hospital, a hospital affiliate, or a federally qualified health center if [certain information]… is provided to the patient.[16]

The law does not define "facility," however, its definition of "patient" as "a person who is not at risk of opioid overdose but who, in the judgment of the physician, advanced practice registered nurse, or physician assistant, may be in a position to assist another individual during an overdose and who has received certain required information," does not exclude minors.[17] Obtaining, storing, or dispensing naloxone to minors under this provision likely does not require parental or guardian consent, as the paragraph applies notwithstanding any "law or rule." Individuals acting under this provision are protected from criminal liability, except for in cases of willful and wanton misconduct, as well as from liability under professional licensing statutes.[18]

Outside of such facilities, parent or guardian consent is likely not required for minors to obtain naloxone from medical providers, pharmacists pursuant to the statewide standing order,[19] or from an authorized DOPP.[20] The DOPP law provides criminal immunity as well as immunity from any violation of professional licensing statutes to health care professionals who directly or by standing order prescribe or dispense an opioid antagonist in good faith absent willful and wanton misconduct to:

> (a) a patient who, *in the judgment of the health care professional*, is capable of administering the drug in an emergency, or (b) a person who is not at risk of opioid overdose but who, *in the judgment of the health care professional*, may be in a position to assist another individual during an opioid-related drug overdose and who has received basic instruction on how to administer an opioid antagonist.[21] (emphasis added).

The DOPP law places no age limits on the recipients of naloxone and instead leaves judgement for appropriateness of providing naloxone up to the health care professional based on the individual's capability or potential opportunity to *administer* the drug. Such prescribing or dispensing is likely not the kind of treatment for which medical informed consent is required, as the recipient does not undergo any sort of treatment, and "[t]he gravamen in an informed consent case requires the plaintiff to 'point to significant undisclosed information relating to the treatment which would have altered her decision to undergo it.'"[22]

The Illinois Department of Human Services may also authorize programs to prescribe, dispense, and distribute naloxone.[23] For the reasons above, parental or guardian consent is not required for laypeople to distribute to minors as part of an authorized DOPP program. However, laypeople dispensing naloxone are not entitled to criminal or licensing statute immunities unless they are doing so under the direction of a health care professional in a "facility" including, but not limited to, a hospital, a hospital affiliate, or a federally qualified health center.[24]

Absent willful and wanton misconduct, Illinois law provides immunity from civil and criminal liability and violations of professional licensing statutes to lay people who have received certain information and who administer an opioid antagonist to another person without fee in a good faith belief that the other person is experiencing an overdose.[25] As this law imposes no restrictions on the individuals to whom immunity is granted, immunity from civil and criminal liability for the administration of naloxone almost certainly applies to minors to the same extent as it does to those of the age of majority.

Distributing and administering naloxone in schools

In Illinois, schools may maintain certain medications, including naloxone, for the purposes of administering them in an emergency.[26] Only school nurses and trained personnel[27] are permitted to administer naloxone,[28] and schools are required to report such administration to the Illinois State Board of Education.[29] When a school nurse or trained personnel administers naloxone to a person who they in good faith believe is having an opioid overdose, the school and school district, its employees and agents, and the medical professional providing the prescription for the naloxone are protected from liability or professional discipline, except for willful and wanton misconduct, as a result of any injury "arising from the use of an opioid antagonist…regardless of whether authorization was given by the pupil's parents or guardians or by the pupil's physician, physician assistant, or advanced practice registered nurse."[30]

The Illinois school naloxone administration code does not address the prophylactic dispensing or distribution of naloxone to students in school settings.[31] It is not clear whether a school would be considered a "facility under the DOPP law.[32] However, authorized DOPPs may likely distribute naloxone in schools to the same extent as they may distribute to minors in other settings.

Conclusion

Illinois' naloxone access law, which is designed to increasing access to this lifesaving medication, does not exclude minors from either its naloxone access or liability protection provisions.[33] In most cases, dispensing naloxone to minors likely does not require parental consent, as it is either being dispensed for use on another individual and therefore does not require medical consent, or is exempted by a provision of Illinois' Consent by Minors to Health Care Services Act pertaining to substance use disorders.[34]

Minors in Illinois can likely access naloxone without parental or guardian consent in several ways, including from "a facility that includes, but is not limited to, a hospital, a hospital affiliate, or a federally qualified health center,"[35] from pharmacists pursuant to Illinois' standing naloxone order,[36] from authorized opioid overdose education and naloxone distribution programs,[37] and from health care professionals prescribing to a minor who is capable of administering naloxone or may be in a position to assist with an overdose.[38]

Health care professionals, including pharmacists, are likely protected from criminal liability and liability under professional licensing statutes for the prescribing and dispensing of naloxone to minors to the same extent as they are for dispensing or prescribing to adults.[39] Laypeople dispensing naloxone are entitled to criminal or licensing statute immunities if they do so under the direction of a health care professional in a "facility" including, but not limited to, a hospital, a hospital affiliate, or a federally qualified health center.[40]

This document was developed by Kendall Schutzer with assistance from Corey Davis, JD, MSPH and Amy Lieberman, JD at the Network for Public Health Law's Harm Reduction Legal Project (harmreduction@networkforphl.org) in March 2022. The information provided in this document does not constitute legal advice or legal representation. For legal advice, please consult specific legal counsel.

[1] National Center for Health Statistics. Vital Statistics Rapid Release: Provisional Drug Overdose Death Counts. 2022; https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm. Accessed March 1, 2022.
[2] *Id.*
[3] 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* Chamberlain JM, Klein BL. A comprehensive review of naloxone for the emergency physician. *Am J Emerg Med.* 1994;12(6):650-660.
[4] For a comprehensive list of state naloxone access laws, *see* Network for Public Health Law, Legal Interventions to Reduce Overdose Mortality: Naloxone Access Laws. 2021; https://www.networkforphl.org/wp-content/uploads/2021/04/NAL-FINAL-4-12.pdf. Accessed February 22, 2022.
[5] Nicholas Chadi & Scott E. Hadland, *Youth Access to Naloxone: The Next Frontier?*, 65 J. Adolescent Health 571, 571 (2019).
[6] NGOZI O. EZIKE, *Statewide Semiannual Opioid Report* (2021), https://dph.illinois.gov/content/dam/soi/en/web/idph/publications/idph/topics-and-services/opioids/idphdata/idph-semiannual-opioid-report-august-2021.pdf (last visited Mar 3, 2022).
[7] 755 Ill. Comp. Stat. Ann. 5/11-1.
[8] 410 Ill. Comp. Stat. Ann. 210/2. ("Any parent, including a parent who is a minor, *may* consent to the performance upon his or her child of a health care service by a physician licensed to practice medicine in all its branches, a chiropractic physician, a licensed optometrist, a licensed advanced practice registered nurse, or a licensed physician assistant or a dental procedure by a licensed dentist." (emphasis added).). The statute spells out specific instances where minors may consent for themselves, but these exceptions are not exhaustive. For example, "if the evidence is clear and convincing that the minor is mature enough to appreciate the consequences of her actions, and that the minor is mature enough to exercise the judgment of an adult, then the mature minor doctrine affords her the common law right to consent to or refuse medical treatment." *In re E.G.*, 549 N.E.2d 322; 327–28. (Ill. 1989) (holding that minor whom court has determined to possess requisite degree of maturity has limited right to refuse life-sustaining medical treatment). "[T]he legislature did not intend that there be an absolute 18–year–old age barrier prohibiting minors from consenting to medical treatment." *In re E.G.*, 549 N.E.2d 322, 325–26 (Ill. 1989).
[9] 410 Ill. Comp. Stat. Ann. 210/3(a).

[10] 410 Ill. Comp. Stat. Ann. 210/1. *See also* Rachel Nolan, *Consent by Minors to Medical Treatment* (2021), https://www.team-iha.org/files/non-gated/legal/consent-by-minors.aspx?ext=. (last visited Feb 18, 2022) (summarizing legal-status-related exceptions to minor health care consent laws in Illinois).
[11] Even under these circumstances, certain conditions must be met: (1) the health care professional must reasonably believe that the minor seeking care understands the benefits and risks of any proposed primary care or services; and (2) the minor seeking care must be identified in writing as a "minor seeking care" as defined in 410 Ill. Comp. Stat. Ann. 210/1.5(e) by an adult relative, a representative of a homeless service agency, an Illinois licensed attorney, a public school homeless liaison or school social worker, a social service agency, or a representative of a religious organization. 410 Ill. Comp. Stat. Ann. 210/1.5.
[12] 410 Ill. Comp. Stat. Ann. 210/1.5(e) ("'Primary care services' means health care services that include screening, counseling, immunizations, medication, and treatment of illness and conditions customarily provided by licensed health care professionals in an out-patient setting, eye care services, excluding advanced optometric procedures, provided by optometrists, and services provided by chiropractic physicians according to the scope of practice of chiropractic physicians under the Medical Practice Act of 1987. 'Primary care services' does not include invasive care, beyond standard injections, laceration care, or non-surgical fracture care.").
[13] 410 Ill. Comp. Stat. Ann. 210/4. Similar provisions apply to minors 12 years or older who may have come into contact with any sexually transmitted disease. *Id.* Additionally, for any minor who is a victim of a sex crime included in Sections 11-1.20 through 11-1.60 of the Criminal Code of 2012, parent or legal guardian consent is not required to "authorize a hospital, physician, chiropractic physician, optometrist, advanced practice registered nurse, physician assistant, or other medical personnel to furnish health care services or counseling related to the diagnosis or treatment of any disease or injury arising from such offense." 410 Ill. Comp. Stat. Ann. 210/3(b).
[14] 410 Ill. Comp. Stat. Ann. 210/4.
[15] 410 Ill. Comp. Stat. Ann. 210/4. Additionally, "any qualified person employed (i) by an organization licensed or funded by the Department of Human Services, (ii) by units of local government, or (iii) by agencies or organizations operating drug abuse programs funded or licensed by the Federal Government or the State of Illinois or any qualified person employed by or associated with any public or private alcoholism or drug abuse program licensed by the State of Illinois …who provides *counseling* to a minor who abuses drugs or alcohol or has a family member who abuses drugs or alcohol shall not inform the parent, parents, guardian, or other responsible adult of the minor's condition or treatment without the minor's consent unless that action is, in the person's judgment, necessary to protect the safety of the minor, a family member, or another individual." 410 Ill. Comp. Stat. Ann. 210/5 (emphasis added).
[16] 20 Ill. Comp. Stat. Ann. 301/5-23(d)(1.5).
[17] 20 Ill. Comp. Stat. Ann. 301/5-23(d)(4).
[18] 20 Ill. Comp. Stat. Ann. 301/5-23 (d)(1.5).
[19] Illinois' statewide standing order for naloxone acts as a prescription that allows pharmacists, pharmacies, and authorized opioid overdose education and naloxone distribution programs to obtain and distribute naloxone. Illinois Naloxone Standardized Procedure, (2019), https://dph.illinois.gov/content/dam/soi/en/web/idph/files/naloxone-so-procedures.pdf (last visited Feb 18, 2022).
[20] The DOPP law permits the Illinois Department of Human Services (IDHS) to establish or authorize programs for prescribing, dispensing, or distributing opioid antagonists for the treatment of drug overdose including "to a person who is not at risk of opioid overdose but who, in the judgment of the health care professional, may be in a position to assist another individual during an opioid-related drug overdose and who has received basic instruction on how to administer an opioid antagonist." 20 Ill. Comp. Stat. Ann. 301/5-23(b)(1).
[21] 20 Ill. Comp. Stat. Ann. 301/5-23(d)(1) (emphasis added).
[22] *Davis v. Kraff*, 937 N.E.2d 306, 315 (Ill. App. Ct. 2010) (quoting *Coryell v. Smith*, 653 N.E.2d 1317, 1319 (Ill. App. Ct 1995).
[23] 20 Ill. Comp. Stat. Ann. 301/5-23(b)(1).
[24] 20 Ill. Comp. Stat. Ann. 301/5-23(d)(1.5)

[25] 20 Ill. Comp. Stat. Ann. 301/5-23 (d)(2).
[26] Ill. Admin. Code tit. 23, § 1.540.
[27] Trained personnel means any school employee or authorized volunteer personnel who has completed training to recognize an opioid overdose. 105 Ill. Comp. Stat. Ann. 5/22-30(a). Trained personnel must submit proof of completion of a training curriculum that meets requirements laid out in 105 Ill. Comp. Stat. Ann. 5/22-30 (h-5) as well as proof of CPR training. 105 Ill. Comp. Stat. Ann. 5/22-30(g).
[28] Ill. Admin. Code tit. 23, § 1.540(e).
[29] Ill. Admin. Code tit. 23, § 1.540(f).
[30] 105 Ill. Comp. Stat. Ann. 5/22-30(c-5).
[31] 105 Ill. Comp. Stat. Ann. 5/22-30.
[32] 20 Ill. Comp. Stat. Ann. 301/5-23(d)(1.5).
[33] Indeed, the Illinois Department of Human Services (IDHS) website states that DOPP is "essential to ending the overdose crisis in Illinois by making sure that *anybody* who may witness an opioid overdose is equipped with naloxone and the knowledge they need to save a life." IDHS/SUPR Drug Overdose Prevention Program, ILLINOIS DEPARTMENT OF HEALTH AND HUMAN SERVICES, https://www.dhs.state.il.us/page.aspx?item=58142 (last visited March 1, 2022) (emphasis added).
[34] *See* 410 Ill. Comp. Stat. Ann. 210/4.
[35] 20 Ill. Comp. Stat. Ann. 301/5-23(d)(1.5).
[36] 20 Ill. Comp. Stat. Ann. 301/5-23 (d)(1) (emphasis added).
[37] 20 Ill. Comp. Stat. Ann. 301/5-23(b)(1).
[38] 20 Ill. Comp. Stat. Ann. 301/5-23 (d)(1) (emphasis added).
[39] 20 Ill. Comp. Stat. Ann. 301/5-23(d)(1).
[40] 20 Ill. Comp. Stat. Ann. 301/5-23(d)(1.5).