

Representative Carol Spackman Moss proposes the following substitute bill:

OPIATE OVERDOSE RESPONSE ACT AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Carol Spackman Moss

Senate Sponsor: Brian E. Shiozawa

LONG TITLE

General Description:

This bill amends civil liability in the Opiate Overdose Response Act.

Highlighted Provisions:

This bill:

- ▶ identifies the persons who are not civilly liable when administering an opiate antagonist under certain circumstances;
- ▶ permits an overdose outreach provider to furnish an opiate antagonist to another overdose outreach provider; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

26-55-102, as last amended by Laws of Utah 2016, Chapters 127, 202, 207, and 208

26-55-104, as last amended by Laws of Utah 2016, Chapters 202, 207, 208 and last amended by Coordination Clause, Laws of Utah 2016, Chapter 202



26 **26-55-106**, as enacted by Laws of Utah 2016, Chapter 207 and last amended by
27 Coordination Clause, Laws of Utah 2016, Chapter 202

28 **58-17b-501**, as last amended by Laws of Utah 2013, Chapter 262

29

30 *Be it enacted by the Legislature of the state of Utah:*

31 Section 1. Section **26-55-102** is amended to read:

32 **26-55-102. Definitions.**

33 As used in this chapter:

34 (1) "Controlled substance" means the same as that term is defined in Title 58, Chapter
35 37, Utah Controlled Substances Act.

36 (2) "Dispense" means the same as that term is defined in Section **58-17b-102**.

37 (3) "Health care facility" means a hospital, a hospice inpatient residence, a nursing
38 facility, a dialysis treatment facility, an assisted living residence, an entity that provides home-
39 and community-based services, a hospice or home health care agency, or another facility that
40 provides or contracts to provide health care services, which facility is licensed under Chapter
41 21, Health Care Facility Licensing and Inspection Act.

42 (4) "Health care provider" means:

43 (a) a physician, as defined in Section **58-67-102**;

44 (b) an advanced practice registered nurse, as defined in Section **58-31b-102**;

45 (c) a physician assistant, as defined in Section **58-70a-102**; or

46 (d) an individual licensed to engage in the practice of dentistry, as defined in Section
47 **58-69-102**.

48 (5) "Increased risk" means risk exceeding the risk typically experienced by an
49 individual who is not using, and is not likely to use, an opiate.

50 (6) "Local health department" means:

51 (a) a local health department, as defined in Section **26A-1-102**; or

52 (b) a multicounty local health department, as defined in Section **26A-1-102**.

53 (7) "Opiate" means the same as that term is defined in Section **58-37-2**.

54 (8) "Opiate antagonist" means naloxone hydrochloride or any similarly acting drug that
55 is not a controlled substance and that is approved by the federal Food and Drug Administration
56 for the diagnosis or treatment of an opiate-related drug overdose.

57 (9) "Opiate-related drug overdose event" means an acute condition, including a
58 decreased level of consciousness or respiratory depression resulting from the consumption or
59 use of a controlled substance, or another substance with which a controlled substance was
60 combined, and that a person would reasonably believe to require medical assistance.

61 (10) "Overdose outreach provider" means:

62 (a) a law enforcement agency;

63 (b) a fire department;

64 (c) an emergency medical service provider, as defined in Section 26-8a-102;

65 (d) emergency medical service personnel, as defined in Section 26-8a-102;

66 (e) an organization providing treatment or recovery services for drug or alcohol use;

67 (f) an organization providing support services for an individual, or a family of an
68 individual, with a substance use disorder;

69 (g) an organization providing substance use or mental health services under contract
70 with a local substance abuse authority, as defined in Section 62A-15-102, or a local mental
71 health authority, as defined in Section 62A-15-102;

72 (h) an organization providing services to the homeless;

73 (i) a local health department; ~~or~~

74 (j) an individual licensed to practice pharmacy under Title 58, Chapter 17b, Pharmacy
75 Practice Act; or

76 ~~(j)~~ (k) an individual.

77 (11) "Patient counseling" means the same as that term is defined in Section
78 58-17b-102.

79 (12) "Pharmacist" means the same as that term is defined in Section 58-17b-102.

80 (13) "Pharmacy intern" means the same as that term is defined in Section 58-17b-102.

81 (14) "Prescribe" means the same as that term is defined in Section 58-17b-102.

82 Section 2. Section 26-55-104 is amended to read:

83 **26-55-104. Prescribing, dispensing, and administering an opiate antagonist --**
84 **Immunity from liability.**

85 (1) (a) (i) For purposes of Subsection (1)(a)(ii), "a person other than a health care
86 facility or health care provider" includes the following, regardless of whether the person has
87 received funds from the department through the Opiate Overdose Outreach Pilot Program

88 created in Section 26-55-107:

89 (A) a person described in Subsections 26-55-107(1)(a)(i)(A) through (1)(a)(i)(F); or

90 (B) an organization, defined by department rule made under Subsection

91 26-55-107(7)(e), that is in a position to assist an individual who is at increased risk of

92 experiencing an opiate-related drug overdose event.

93 (ii) Except as provided in Subsection (1)(b), [~~a person, including an overdose outreach~~

94 ~~provider, but not including a health care facility or health care provider, that] the following~~

95 ↳ individuals persons ← are not liable for any civil damages for acts or omissions made as a
96a result of

96 administering an opiate antagonist when the ↳ individual person ← acts in good faith to

96a administer [~~an~~] the

97 opiate antagonist to an individual whom the person believes to be experiencing an

98 opiate-related drug overdose event [~~is not liable for any civil damages for acts or omissions~~

99 ~~made as a result of administering the opiate antagonist.];~~

100 (A) an overdose outreach provider; or

101 (B) a person other than a health care facility or health care provider.

102 (b) A health care provider:

103 (i) [~~does~~] is not [have immunity] immune from liability under Subsection (1)(a) when

104 the health care provider is acting within the scope of the health care provider's responsibilities

105 or duty of care; and

106 (ii) [~~does have immunity~~] is immune from liability under Subsection (1)(a) if the health

107 care provider is under no legal duty to respond and otherwise complies with Subsection (1)(a).

108 (2) Notwithstanding Sections 58-1-501, 58-17b-501, and 58-17b-502, a health care

109 provider who is licensed to prescribe an opiate antagonist may prescribe, including by a

110 standing prescription drug order issued in accordance with Subsection 26-55-105(2), or

111 dispense an opiate antagonist:

112 (a) (i) to an individual who is at increased risk of experiencing an opiate-related drug
113 overdose event;

114 (ii) for an individual described in Subsection (2)(a)(i), to a family member [of], friend

115 [of], or other person, including a person described in Subsections 26-55-107(1)(a)(i)(A)

116 through (1)(a)(i)(F), that is in a position to assist [an] the individual [who is at increased risk of

117 experiencing an opiate-related drug overdose event]; or

118 (iii) to an overdose outreach provider for:

119 (A) furnishing the opiate antagonist to an individual [~~who is at increased risk of~~
 120 ~~experiencing an opiate-related drug overdose event, or to a family member of, friend of, or~~
 121 ~~other individual who is in a position to assist an individual who is at increased risk of~~
 122 ~~experiencing an opiate-related drug overdose event~~] described in Subsection (2)(a)(i) or (ii), as
 123 provided in Section [26-55-106](#); or

124 (B) administering to an individual experiencing an opiate-related drug overdose event;

125 (b) without a prescriber-patient relationship; and

126 (c) without liability for any civil damages for acts or omissions made as a result of

127 prescribing or dispensing the opiate antagonist in good faith.

128 (3) A health care provider who dispenses an opiate antagonist to an individual or an
 129 overdose outreach provider under Subsection (2)(a) shall provide education to the individual or
 130 overdose provider that includes written instruction on how to:

131 (a) recognize an opiate-related drug overdose event; and

132 (b) respond appropriately to an opiate-related drug overdose event, including how to:

133 (i) administer an opiate antagonist; and

134 (ii) ensure that an individual to whom an opiate antagonist has been administered

135 receives, as soon as possible, additional medical care and a medical evaluation.

136 Section 3. Section **26-55-106** is amended to read:

137 **26-55-106. Overdose outreach providers.**

138 Notwithstanding Sections [58-1-501](#), [58-17b-501](#), and [58-17b-502](#):

139 (1) an overdose outreach provider may:

140 (a) obtain an opiate antagonist dispensed on prescription by:

141 (i) a health care provider, in accordance with Subsections [26-55-104](#)(2) and (3); or

142 (ii) a pharmacist or pharmacy intern, as otherwise authorized by Title 58, Chapter 17b,

143 Pharmacy Practice Act;

144 (b) store the opiate antagonist; and

145 (c) furnish the opiate antagonist:

146 (i) (A) to an individual who is at increased risk of experiencing an opiate-related drug

147 overdose event; or

148 (B) to a family member [~~of~~], friend [~~of~~], overdose outreach provider, or other

149 individual who is in a position to assist an individual who is at increased risk of experiencing

150 an opiate-related drug overdose event; and

151 (ii) without liability for any civil damages for acts or omissions made as a result of
152 furnishing the opiate antagonist in good faith; and

153 (2) when furnishing an opiate antagonist under Subsection (1), an overdose outreach
154 provider:

155 (a) shall also furnish to the recipient of the opiate antagonist:

156 (i) the written instruction under Subsection 26-55-104(3) received by the overdose
157 outreach provider from the health care provider at the time the opiate antagonist was dispensed
158 to the overdose outreach provider; or

159 (ii) if the opiate antagonist was dispensed to the overdose outreach provider by a
160 pharmacist or pharmacy intern, any written patient counseling under Section 58-17b-613
161 received by the overdose outreach provider at the time of dispensing; and

162 (b) may provide additional instruction on how to recognize and respond appropriately
163 to an opiate-related drug overdose event.

164 Section 4. Section 58-17b-501 is amended to read:

165 **58-17b-501. Unlawful conduct.**

166 "Unlawful conduct" includes:

167 (1) knowingly preventing or refusing to permit an authorized agent of the division to
168 conduct an inspection pursuant to Section 58-17b-103;

169 (2) failing to deliver the license, permit, or certificate to the division upon demand, if it
170 has been revoked, suspended, or refused;

171 (3) (a) using the title "pharmacist," "druggist," "pharmacy intern," "pharmacy
172 technician," or a term having similar meaning, except by a person licensed as a pharmacist,
173 pharmacy intern, or pharmacy technician; or

174 (b) conducting or transacting business under a name that contains, as part of that name,
175 the words "drugstore," "pharmacy," "drugs," "medicine store," "medicines," "drug shop,"
176 "apothecary," "prescriptions," or a term having a similar meaning, or in any manner
177 advertising, otherwise describing, or referring to the place of the conducted business or
178 profession, unless the place is a pharmacy issued a license by the division, except an
179 establishment selling nonprescription drugs and supplies may display signs bearing the words
180 "packaged drugs," "drug sundries," or "nonprescription drugs," and is not considered to be a

181 pharmacy or drugstore by reason of the display;

182 (4) buying, selling, causing to be sold, or offering for sale, a drug or device that bears,
183 or the package bears or originally did bear, the inscription "sample," "not for resale," "for
184 investigational or experimental use only," or other similar words, except when a cost is
185 incurred in the bona fide acquisition of an investigational or experimental drug;

186 (5) using to a person's own advantages or revealing to anyone other than the division,
187 board, and its authorized representatives, or to the courts, when relevant to a judicial or
188 administrative proceeding under this chapter, information acquired under authority of this
189 chapter or concerning a method of process that is a trade secret;

190 (6) procuring or attempting to procure a drug or to have someone else procure or
191 attempt to procure a drug:

192 (a) by fraud, deceit, misrepresentation, or subterfuge;

193 (b) by forgery or alteration of a prescription or a written order;

194 (c) by concealment of a material fact;

195 (d) by use of a false statement in a prescription, chart, order, or report; or

196 (e) by theft;

197 (7) filling, refilling, or advertising the filling or refilling of prescriptions for a
198 consumer or patient residing in this state if the person is not licensed:

199 (a) under this chapter; or

200 (b) in the state from which he is dispensing;

201 (8) requiring an employed pharmacist, pharmacy intern, pharmacy technician, or
202 authorized supportive personnel to engage in conduct in violation of this chapter;

203 (9) being in possession of a prescription drug for an unlawful purpose;

204 (10) dispensing a prescription drug to a person who does not have a prescription from a
205 practitioner, except as permitted under Title 26, Chapter 55, Opiate Overdose Response Act, or
206 to a person who the person dispensing the drug knows or should know is attempting to obtain
207 drugs by fraud or misrepresentation;

208 (11) selling, dispensing, distributing, or otherwise trafficking in prescription drugs
209 when not licensed to do so or when not exempted from licensure; and

210 (12) a person using a prescription drug or controlled substance that was not lawfully
211 prescribed for the person by a practitioner.