

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

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

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

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

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

26-55-102. Definitions.

As used in this chapter:

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

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

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

(4) "Health care provider" means:

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

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

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

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

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

(6) "Local health department" means:

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

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

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

(8) "Opiate antagonist" means naloxone hydrochloride or any similarly acting drug that is not a controlled substance and that is approved by the federal Food and Drug Administration

for the diagnosis or treatment of an opiate-related drug overdose.

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

(10) "Overdose outreach provider" means:

- (a) a law enforcement agency;
- (b) a fire department;
- (c) an emergency medical service provider, as defined in Section 26-8a-102;
- (d) emergency medical service personnel, as defined in Section 26-8a-102;
- (e) an organization providing treatment or recovery services for drug or alcohol use;
- (f) an organization providing support services for an individual, or a family of an individual, with a substance use disorder;
- (g) an organization providing substance use or mental health services under contract with a local substance abuse authority, as defined in Section 62A-15-102, or a local mental health authority, as defined in Section 62A-15-102;
- (h) an organization providing services to the homeless;
- (i) a local health department; ~~or~~
- (j) an individual licensed to practice pharmacy under Title 58, Chapter 17b, Pharmacy Practice Act; or
- ~~(j)~~ (k) an individual.

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

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

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

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

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

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

(1) (a) (i) For purposes of Subsection (1)(a)(ii), "a person other than a health care facility or health care provider" includes the following, regardless of whether the person has received funds from the department through the Opiate Overdose Outreach Pilot Program created in Section 26-55-107:

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

(B) an organization₂ defined by department rule made under Subsection 26-55-107(7)(e)₂ that is in a position to assist an individual who is at increased risk of experiencing an opiate-related drug overdose event.

(ii) Except as provided in Subsection (1)(b), ~~[a person, including an overdose outreach provider, but not including a health care facility or health care provider, that]~~ the following persons are not liable for any civil damages for acts or omissions made as a result of administering an opiate antagonist when the person acts in good faith to administer [an] the opiate antagonist to an individual whom the person believes to be experiencing an opiate-related drug overdose event [is not liable for any civil damages for acts or omissions made as a result of administering the opiate antagonist.];

(A) an overdose outreach provider; or

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

(b) A health care provider:

(i) ~~[does]~~ is not ~~[have immunity]~~ immune from liability under Subsection (1)(a) when the health care provider is acting within the scope of the health care provider's responsibilities or duty of care; and

(ii) ~~[does have immunity]~~ is immune from liability under Subsection (1)(a) if the health care provider is under no legal duty to respond and otherwise complies with Subsection (1)(a).

(2) Notwithstanding Sections 58-1-501, 58-17b-501, and 58-17b-502, a health care provider who is licensed to prescribe an opiate antagonist may prescribe, including by a

standing prescription drug order issued in accordance with Subsection 26-55-105(2), or dispense an opiate antagonist:

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

(ii) for an individual described in Subsection (2)(a)(i), to a family member ~~[of]~~, friend ~~[of]~~, or other person, including a person described in Subsections 26-55-107(1)(a)(i)(A) through (1)(a)(i)(F), that is in a position to assist ~~[an]~~ the individual ~~[who is at increased risk of experiencing an opiate-related drug overdose event]~~; or

(iii) to an overdose outreach provider for:

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

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

(b) without a prescriber-patient relationship; and

(c) without liability for any civil damages for acts or omissions made as a result of prescribing or dispensing the opiate antagonist in good faith.

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

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

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

(i) administer an opiate antagonist; and

(ii) ensure that an individual to whom an opiate antagonist has been administered receives, as soon as possible, additional medical care and a medical evaluation.

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

26-55-106. Overdose outreach providers.

Notwithstanding Sections 58-1-501, 58-17b-501, and 58-17b-502:

(1) an overdose outreach provider may:

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

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

(ii) a pharmacist or pharmacy intern, as otherwise authorized by Title 58, Chapter 17b, Pharmacy Practice Act;

(b) store the opiate antagonist; and

(c) furnish the opiate antagonist:

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

(B) to a family member ~~[of]~~, friend ~~[of]~~, overdose outreach provider, or other individual who is in a position to assist an individual who is at increased risk of experiencing an opiate-related drug overdose event; and

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

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

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

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

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

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

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

58-17b-501. Unlawful conduct.

"Unlawful conduct" includes:

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

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

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

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

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

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

(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.