

Taking Aim at Virginia's Opioid Crisis through Changes in Public Health Law

by Health Services Section, Office of the Attorney General



Health Services Section of the Office of the Attorney General staff: Front row from left to right: Karen A. Taylor, Allyson K. Tysinger, Erin L. Barrett, Amanda L. Lavin; Middle row from left to right: Pamela B. Beckner, Robin V. Kurz, Charis A. Mitchell; Back row from left to right: Sean J. Murphy, Braden J. Curtis, James E. Rutkowski.

What is the leading cause of both unnatural death and accidental death in Virginia? Surprisingly, it is not motor vehicle accidents or guns. The answer is drug overdose.¹ The number of individuals who die from drug overdose has been on the rise every year since 2012, with the most recent data showing a 38.9 percent increase in the number of drug overdose deaths from 2015 to 2016.² Opioids, including both prescription opioids and illicitly produced opioids such as heroin and fentanyl, account for approximately 75 percent of all fatal drug overdoses annually in Virginia.³ From 2015 to 2016, the number of fatal opioid

overdoses increased by 40.3 percent.⁴ According to the Virginia Department of Health (VDH), on average three Virginians die of drug overdose and over two dozen are treated in emergency departments for drug overdose each day.⁵ The opioid epidemic that Virginia is experiencing is not merely a criminal justice problem; it is a matter of public health. In fact, State Health Commissioner Dr. Marissa Levine declared opioid addiction to be a public health emergency on November 21, 2016.⁶ Discussed below are recent legislative and regulatory public health efforts Virginia has undertaken to address the crisis.

Access to Prescription Opioids

Until 2015, the leading category of drugs causing or contributing to death in Virginia was prescription opioids.⁷ As a result of the declaration of a public health emergency by the State Health Commissioner, the Virginia Board of Medicine began drafting emergency regulations governing the prescribing of opioid medications in December 2016.⁸ After receiving extensive input from practitioners, patients, and the general public, the regulations, adopted in March 2017, establish requirements for practitioners prescribing opioids for both acute pain and chronic pain treatment. Those requirements include opting for non-opioid treatment where possible,⁹ limits on dosage amounts,¹⁰ and other measures aimed at preventing misuse of the medication.¹¹ Since the Board of Medicine adopted its emergency regulations, the Committee of the Joint Boards of Nursing and Medicine, the Board of Dentistry, and the Board of Veterinary Medicine have also adopted similar emergency regulations regarding opioid prescribing. Each of these boards' emergency regulations are similar to the emergency regulations of the Board of Medicine with some differences due to the specific scope of practice of the practitioners that each board regulates.

During its 2017 session, the General Assembly passed legislation directing the Boards of Medicine and Dentistry to adopt permanent regulations governing the prescribing of opioids that include guidelines for treatment of acute and chronic pain. That legislation was codified at Virginia Code §§ 54.1-2708.4 and 54.1-2928.2, and requires the permanent regulations to address the same areas that the boards addressed in their emergency regulations.¹² Each board that adopted emergency regulations is in the process of adopting permanent regulations.

In addition to the regulations that govern the prescribing of opioids, the Board of Pharmacy has adopted regulations, effective September 7, 2017, that allow a patient or prescriber to request a prescription for a Schedule II drug to be filled in a partial quantity. This allowance enables a patient or prescriber to avoid the possibility of the receipt of more medication than the patient ultimately needs.¹³ This action brings the commonwealth into conformity with a recently enacted federal law, the Comprehensive Addiction and Recovery Act of 2016.¹⁴

Also during the 2017 legislative session, the General Assembly amended Virginia Code § 54.1-2522.1 related to prescribers' usage of the Prescription Monitoring Program (PMP).¹⁵ The PMP, which is maintained and administered by the director of the Department of Health Professions (DHP), monitors the dispensing of certain covered substances, including opioids.¹⁶ Under the 2017 amendment, prescribers must query the PMP if the prescription of opioids is anticipated to last more than seven consecutive days.¹⁷ Requiring PMP queries enables prescribers to be aware of all current and recent prescriptions for a patient, potentially preventing the patient from going to different practitioners in order to receive opioids. Every board that has adopted emergency regulations governing opioid prescribing has required its licensees to consult the PMP at regular intervals during opioid treatment.¹⁸

In 2016, the General Assembly amended Virginia Code § 54.1-2523.1 to direct the PMP to develop a method to analyze the data it collected to identify unusual patterns of prescribing or dispensing of covered substances by individual prescribers or dispensers or potential misuse of a covered substance by a recipient.¹⁹ The director of DHP was given the authority to disclose information regarding unusual prescribing or dispensing to the Enforcement Division of DHP for potential administrative investigation that could lead to disciplinary action.²⁰ The director of DHP was also permitted to disclose information about a specific recipient who may be misusing a covered substance to his prescribers to prevent misuse or to certain law enforcement agents for the purpose of an investigation into possible drug diversion.²¹ In 2017, the General Assembly further directed the PMP to annually provide a report to the Joint Commission on Health Care on the prescribing of opioids that includes data on reporting of unusual patterns of prescribing or dispensing.²²

Decreasing Overdose Fatalities

Naloxone is an opioid antagonist drug that reverses the effects that opioids have in the brain. When a person overdoses on opioids, the opioid overwhelms the brain, resulting in decreased respiration and heart rate until the heart stops altogether. Naloxone allows a person's body to resume respiration.²³ Naloxone was previously available only by prescription, but Virginia law now authorizes

the State Health Commissioner, as well as other prescribers, to issue a standing order that permits an individual to purchase naloxone from a pharmacy and possess and administer it to someone who appears to be experiencing an opioid overdose.²⁴ Commissioner Levine issued a statewide standing order for naloxone at the time she declared a public health emergency, enabling the purchase of naloxone at any pharmacy in the commonwealth.²⁵

Under protocols established by the Board of Pharmacy in consultation with the Board of Medicine and VDH pursuant to Virginia Code § 54.1-3408(X), the pharmacist must provide a recipient of naloxone with counseling in opioid overdose prevention, recognition, and response, and the administration of naloxone.²⁶ This counseling cannot be waived by the recipient unless the pharmacist verifies that the recipient has completed the REVIVE! training program.²⁷ The Department of Behavioral Health and Developmental Services (DBHDS), in collaboration with VDH, DHP, and community recovery organizations, developed and implements REVIVE!, the commonwealth's Opioid Overdose and Naloxone Education Program. The REVIVE! program began as a pilot project in 2013 under authority set forth in 2013 Va. Acts ch. 267, and is now a statewide program. REVIVE! provides training to lay rescuers and others such as law enforcement officers and firefighters on how to recognize and respond to an opioid overdose emergency with the administration of naloxone. Virginia Code § 54.1-3408(X) also specifically permits law-enforcement officers, firefighters, and employees of the Department of Forensic Science, the Office of the Chief Medical Examiner, and the Division of Consolidated Laboratory Services who have completed a REVIVE! training program to possess and administer naloxone.²⁸

In addition to training lay rescuers, REVIVE! has a second component that trains individuals to lead REVIVE! lay rescuer trainings. Developing trainers will ensure that REVIVE! programs are available in communities throughout Virginia. Under Virginia Code § 54.1-3408(Y), a person who is autho-

rized by DBHDS to lead REVIVE! trainings, is acting on behalf of an organization that provides services to individuals at risk of experiencing an opioid overdose or training in administration of naloxone for overdose reversal, and obtains a controlled substances registration may also dispense naloxone without charge to an individual who has completed a REVIVE! training program.²⁹

Virginia law provides liability protection for those involved in the naloxone effort. If a person in good faith prescribes, dispenses, or administers naloxone to an individual who is believed to be experiencing or about to experience a life-threatening opiate overdose, the person shall not be liable for civil damages for ordinary negligence if acting within the authority described in the preceding paragraphs.³⁰

In addition to championing the laws discussed above that enhance access to naloxone, the Attorney General's Office proposed and supported a safe reporting law in 2015.³¹ This law establishes an affirmative defense to prosecution of an individual for certain drug charges if the individual seeks or obtains emergency medical attention for an overdose for himself or another individual by reporting the overdose to a firefighter, emergency medical services personnel, a law enforcement officer, or an emergency 911 system and the individual remains at the scene until a law enforcement officer arrives.³²

Other Health Issues Associated with Opioid Use
Reported cases of hepatitis C, especially among individuals aged 18 to 30, have been increasing since 2013.³³ Concern regarding the spread of hepatitis C and HIV from

injection drug use led to the enactment of a cutting edge law that authorizes VDH to operate a safe syringe program. Passed in 2017, the law permits the State Health Commissioner to establish and operate local or regional comprehensive harm reduction programs during a declared public health emergency.³⁴ Such programs shall be located in communities where data indicate a risk of transmission of, or increases in the transmission of, HIV, viral hepatitis, or other blood-borne disease as a result of injection drug use.³⁵ Through the program, the



This is a societal issue blurring traditional public health and criminal justice lines that we must all address together.

commissioner may authorize persons to dispense or distribute hypodermic needles and syringes.³⁶ VDH is currently developing the required protocols that will address provision and disposal of needles and syringes, security of program sites, education materials on prevention and treatment, individual counseling, access to overdose prevention kits, and verification that supplies distributed were obtained from the program.

Treatment

Although this article has intentionally focused on the regulatory and legislative actions taken by Virginia to address the opioid crisis, the necessity of available treatment for substance use must be recognized. DBHDS is expediting the licensing process for new substance use treatment services. Ninety-three new substance use treatment services were licensed in the past year. Also, effective April 1, 2017, the Department of Medical Assistance Services implemented an enhanced substance use disorder benefit known as the Addiction Recovery Treatment Services (ARTS) program. The increase in Medicaid rates under the ARTS program is increasing the number of addiction treatment providers who participate in Medicaid. In addition, the ARTS program is utilizing the evidence-based criteria of care developed by the American Society of Addiction Medicine (ASAM), and DBHDS is funding provider training in the ASAM criteria to standardize care across the system.

Conclusion

Virginia's state officials and policy makers have been forward-thinking in treating this epidemic as a public health crisis and enacting laws and regulations that together create a coordinated public health approach intended to reduce access to prescription opioids, prevent overdose deaths and other health issues, and increase treatment availability. Continued collaboration amongst all stakeholders, including health care providers, law enforcement personnel, first responders, legislators, state and local public officials, and advocacy organizations will be needed to halt the sharp increases in annual fatal opioid overdoses that Virginia has been experiencing. This is a societal issue blurring traditional public health and criminal justice lines that we must all address together.

The Health Services Section of the Office of the Attorney General

includes Erin L. Barrett, Pamela B. Beckner, Braden J. Curtis, Robin V. Kurz, Amanda L. Lavin, Charis A. Mitchell, Sean J. Murphy, James E. Rutkowski, Karen A. Taylor, and Allyson K. Tysinger. The Section represents the Virginia Department of Health and its 35 local health districts, the Department of Behavioral Health and Developmental Services, the Department of Health Professions and its 14 health regulatory boards, the Department for Aging and Rehabilitative Services, the Department for the Blind and Vision Impaired, and the Department for the Deaf and Hard of Hearing. Collectively the team has over 80 years of service to the Commonwealth with the Office of the Attorney General.

Endnotes:

- 1 Fatal Drug Overdose Quarterly Report, 1st Quarter, 2017, Edition 2017.1 published July 2017, found at http://www.vdh.virginia.gov/content/uploads/sites/18/2016/04/Fatal-Drug-Overdoses-Quarterly-Report-Q1-2017_Updated.pdf.
- 2 *Id.*
- 3 *Id.*
- 4 *Id.*
- 5 Remarks delivered by State Health Commissioner Dr. Marissa Levine, Nov. 21, 2016, found at <http://www.vdh.virginia.gov/blog/2017/06/01/state-health-commissioner-comments-on-opioid-addiction-declaration/>.
- 6 Declaration of Public Health Emergency, Nov. 21, 2016, found at <http://www.vdh.virginia.gov/commissioner/opioid-addiction-in-virginia/declaration-of-public-health-emergency/>.
- 7 Fatal Drug Overdose Quarterly Report, supra.
- 8 Vol. 33, Iss. 16 Va. Reg. Regs. 1928-32 (Apr. 3, 2017) (18VAC85-21-10 *et seq.*).
- 9 *Id.* at 1929-1930 (18VAC85-21-30(A); 18VAC85-21-70(A)).
- 10 *Id.* (18VAC85-21-40; 18VAC85-21-70).
- 11 *Id.* at 1928-31 (18VAC85-21-30(B); 18VAC85-21-60(A); 18VAC85-21-80; 18VAC85-21-90; 18VAC85-21-100; 18VAC85-21-110; 18VAC85-21-120).
- 12 2017 Va. Acts ch. 291, codified at Va. Code Ann. §§ 54.1-2708.4 and 54.1-2928.2.
- 13 Vol. 33, Iss. 24 Va. Reg. Regs. 2718-20 (July 24, 2017) (18VAC110-20-310(E)).
- 14 Pub. L. No. 114-198, § 702 (2016).
- 15 2017 Va. Acts ch. 249.
- 16 Va. Code Ann. § 54.1-2520(A).
- 17 2017 Va. Acts ch. 249, codified at Va. Code Ann. § 54.1-2522.1.
- 18 Vol. 33, Iss. 16 Va. Reg. Regs. 1928-32 (18VAC85-21-30(B); 18VAC85-21-60(A)(7); 18VAC85-21-100(C); 18VAC85-21-140(A); 18VAC85-21-150(E), (H)); Vol. 33, Iss. 24 Va. Reg. Regs. 2266-2268 (May 29, 2017) (18VAC90-40-150(C); 18VAC90-40-180(B)(7); 18VAC90-40-220(C); 18VAC90-40-260(A)); Vol. 33, Iss. 19 Va. Reg. Regs. 2112-13 (May 15, 2017) (18VAC60-21-102; 18VAC60-21-103).
- 19 2016 Va. Acts ch. 98.
- 20 *Id.*
- 21 *Id.*
- 22 2017 Va. Acts ch. 291.
- 23 REVIVE! Opioid Overdose and Naloxone Education for Virginia, June 2015, found at <http://www.dbhds.virginia.gov/library/substance%20abuse%20services/revive%20pharmacy%20dispensing%20brochure%20v10.pdf>.
- 24 Va. Code Ann. § 54.1-3408(X).
- 25 Virginia Statewide Standing Order for Naloxone, Nov. 21, 2016, found at <http://www.vdh.virginia.gov/content/uploads/sites/4/2016/11/Standing-Order-w-o-DEA-FINAL.pdf>.
- 26 Protocol for the Prescribing and Dispensing of Naloxone, Nov. 10, 2016, found at <http://www.vdh.virginia.gov/content/uploads/sites/4/2016/11/NaloxoneProtocolForPharmacists-11-10-16-CURRENT-version.pdf>.
- 27 *Id.*
- 28 Va. Code Ann. § 54.1-3408(X).
- 29 Va. Code Ann. § 54.1-3408(Y).
- 30 Va. Code Ann. § 8.01-225(A)(18).
- 31 2015 Va. Acts ch. 436.
- 32 Va. Code Ann. § 18.2-251.03.
- 33 Opioid Overdose Data Quarterly Report, 4th Quarter 2016, found at http://www.vdh.virginia.gov/content/uploads/sites/13/2016/09/Opioid-Overdose-Data-Quarterly-Report-Q4-2016_013117.pdf.
- 34 Va. Code Ann. § 32.1-45.4.
- 35 *Id.*
- 36 *Id.*