

ADDRESSING SUBSTANCE USE DISORDER IN DELAWARE: AN UPDATE AND PLAN FOR FUTURE ACTION

*Delaware Department of Justice
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In August of 2015, the Delaware Department of Justice published a document titled “Continuing Efforts to Address Substance Use Disorder in Delaware.” The document outlined the pervasive nature of substance use disorder in Delaware, and proposed several steps that could be part of a broader state plan to reduce the incidence of substance use disorder. Reducing substance use disorder is a priority for the Department of Justice not only because of the impact it has on the criminal justice system, but just as importantly, because of the devastating impact it has on Delaware families.

DOJ outlined the stark numbers that reflect the scope of the crisis in Delaware. Based on a variety of statistical measures taken between 2009 and 2014, Delaware had been found to have the nation’s ninth highest drug overdose rate, a higher percentage of its residents engaging in non-medical use of prescription opioids than the national average, the nation’s fifth highest overall rate of opioid sales, the nation’s second highest per capita prescription rate of high-dose opioid pain relievers, and the nation’s second highest per capita prescription rate of long-acting/extended relief opioid pain relievers.

As DOJ noted, the State of Delaware -- thanks in large part to Governor Markell’s focus on this issue -- has taken important steps to address this epidemic, including the creation in 2010 of the state’s first computerized prescription monitoring program (PMP), the adoption of regulations in 2011 governing the use of controlled substances for the treatment of pain, and investments in new treatment beds. But additional steps were clearly necessary given the unrelenting scope of the problem.

An Update on DOJ Recommendations Made in 2015

In its August 2015 report, the Department of Justice made recommendations in four broad categories to augment the state’s efforts to reduce abuse of prescription opioids, heroin, and fentanyl. Three of the recommendations have been implemented in large part, the fourth has not.

1. ***Stronger State Regulation of Prescription of Opioids.*** In August 2015, the Department of Justice recommended to the state’s Controlled Substance Advisory Committee that the Committee strengthen recently published draft regulations governing the prescription of opioid drugs, to require greater due diligence from health care providers before prescription of opioid drugs for acute care (i.e. less than three months), full patient counseling and a urine screen before prescription of opioids for more than three months, and twice-yearly urine screens and prescription drug monitoring database checks for all patients receiving long-term opioid prescriptions. The state’s Division of Public Health also recommended strengthening the draft regulations. The Controlled Substance Advisory

Committee not only adopted these recommendations, but strengthened them by proposing new regulations that set strict presumptive limits on the prescription of any opioids to children, and prescriptions of more than seven days of opioids to adults. These revised regulations are not yet finalized, but assuming they are implemented largely as currently drafted, they will be among the strictest opiate prescription regulations in the country. DOJ is grateful to the Controlled Substance Advisory Committee, Secretary of State Jeff Bullock, and Division of Professional Regulation Director David Mangler for their leadership in this critical area.

2. ***Formal Review of Deaths Caused by Prescription Opiates and Heroin.*** The Department of Justice called on the state to create a process for systemic review of all deaths of Delawareans due to prescription opiate, heroin, or fentanyl overdoses. The purpose of the reviews would be to make recommendations to the state to more thoughtfully address this problem. Earlier this year, the General Assembly passed and the Governor signed bipartisan legislation creating a Drug Overdose Fatality Review Commission, which held its first meeting today and will prepare annual reports for the state based on its review of overdose deaths.
3. ***Expanding Use of Naloxone by Law Enforcement Officers.*** Thanks in large part to the advocacy efforts of groups such as atTAcK Addiction, in 2014 and 2015 a small number of Delaware police departments began having their officers carry Naloxone, a medication that revives victims of opioid and heroin overdoses. Last August, DOJ indicated that it would seek to make Naloxone more affordable for police departments, so that more departments would allow their officers to carry it. Using funds that DOJ has made available from the State Law Enforcement Assistance Fund, and taking advantage of a discount that DOJ negotiated with the drug manufacturer, the number of police departments in Delaware with officers carrying Naloxone has increased over the last year from six to 23.
4. ***Unfinished Business: Expanding Treatment Generally and Medication Assisted Treatment Specifically.*** Governor Markell and Secretary of Health and Social Services Rita Landgraf deserve great credit for successfully advocating for the addition of state dollars to the creation of substance use disorder treatment opportunities during lean financial times in Delaware. But there is broad consensus that the current inventory of treatment opportunities still does not adequately meet the needs of those seeking treatment. This is especially true with respect to medication assisted treatment, which has been encouraged by the Centers for Disease Control when used responsibly as part of a broader treatment program. Last August, DOJ encouraged the expansion of treatment opportunities and the creation of best practice standards for the use of medication assisted treatment in treating substance use disorder. Attempting to follow through on its own recommendation, DOJ recommended to the General Assembly's Joint Finance Committee that \$3 million in funds received from settlements with national banks be invested in drug treatment for inmates being released from Delaware correctional facilities, with the hope that those funds could be used in

part for medication assisted treatment of those inmates. However, this recommendation was not accepted by the Joint Finance Committee, and more broadly, state funding for treatment of substance use disorder did not increase in the state's current fiscal year budget.

Additional Recommendations Moving Forward

Increasing the state's capacity for treatment of individuals with substance use disorder should be the state's top priority with respect to addressing the epidemic of drug abuse. Part of that effort to increase capacity should be the creation of a comprehensive inventory of the state's unmet treatment needs, so that the state can concretely determine how much investment is needed to meet the demand for services, and try to prioritize spending on new services as funds become available. There are three additional areas that should be areas of focus, where DOJ will be seeking to help the state develop specific plans in the coming months.

1. ***Allowing Medical Licensing Boards and Law Enforcement to Make Better Use of the Prescription Drug Monitoring Program.*** The state's prescription drug monitoring program was created in part to detect the illegal use of controlled substances. Since its creation, the program has permitted the Office of Controlled Substances to use information from the program's records to make referrals to medical licensing authorities or law enforcement. However, the statute authorizing such referrals provides little specific guidance as to when those referrals should be made, and the Office of Controlled Substances does not have the benefit of staff who are trained or have the time to recognize matters that should be referred. In the coming months, DOJ hopes to work with the Office of Controlled Substances, the law enforcement community, and the medical community to determine steps that can be taken to help put the Office of Controlled Substances in a position to refer the small number of prescribers whose prescription patterns raise objective concerns about violation of either criminal statutes or medical standards to appropriate authorities for further investigation.
2. ***Ensuring Adequate Insurance Coverage of Substance Use Disorder Treatment.*** Because of the broad combined scope of Medicaid and the Affordable Care Act, most individuals with substance use disorder are covered by health insurance, and that health insurance is required by law to cover treatment for substance use disorder. However, individuals with substance use disorder – even those who have previously overdosed and who are at great risk if they should relapse -- have reported widespread frustration with the way that treatment is authorized by insurance carriers. In particular, those seeking treatment report being prohibited from seeking residential or other robust forms of treatment until they have first relapsed after seeking less intensive treatment. The consequences of failure in treating substance use disorder are potentially extraordinary – and aside from the human cost, the consequences are also costly in the long run for the health care system and society at large, as many persons who relapse contract other serious

illnesses and engage in criminal activity to subsidize their drug addiction. Beginning in January, DOJ will work with state insurance regulators, Medicaid officials, health care providers, and substance abuse experts to determine what steps must be taken to ensure that insurance carriers handle claims for substance abuse treatment in a thoughtful and responsible manner.

3. ***Improving Education and Notification for Prescribers.*** There are at least two areas where the state, making use of its electronic medical records capacity and access to prescribers through continuing education, could provide important information to prescribers that many do not currently receive. The first relates to the prescription of benzodiazepine medications such as Xanax with opiates – something that can raise the potential for overdose. The second relates to prompt notification of opioid prescribers and suboxone prescribers when an individual receiving a prescription either overdoses or is diagnosed in another setting with substance use disorder. Currently, it is possible for an individual to overdose or be diagnosed with an addiction and have the medical professional who prescribes him his opioid drugs continue to prescribe them, because the prescriber is not automatically made aware of the overdose or diagnosis.