

# ADDRESSING SUBSTANCE USE DISORDER IN DELAWARE: THIRD ANNUAL UPDATE AND PLAN FOR FUTURE ACTION

*Delaware Department of Justice  
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In the fall of 2015 and again in the fall of 2016, the Delaware Department of Justice published formal documents reviewing the state's status in addressing its opioid crisis and recommending additional steps that needed to be taken. This report is the third such document, and it reflects a number of important changes in Delaware in response to the crisis, but a lot of important work remaining to be done. The Delaware Department of Justice has taken a vocal role in addressing the opioid crisis 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.

In 2015, DOJ outlined the stark numbers that reflected 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.

More recent statistics suggest that, although Delaware's standing with respect to other states has improved somewhat, the opioid crisis has escalated. The Kaiser Family Foundation recently reported that Delaware had the nation's 13<sup>th</sup> highest opioid overdose death rate in the country in 2015. That is a marginal improvement over the state's ranking compared to other states in prior years for overall overdoses, but the total number of overdose deaths (including all substances, not just opioids) in Delaware has skyrocketed – from 222 total overdose deaths in 2014 to 308 in 2016. Much of the increase in 2016 is attributable to the presence of fentanyl – deaths involving fentanyl increased from 42 in calendar year 2015 to 120 in calendar year 2016. Just days ago, the Centers for Disease Control reported that Delaware had the highest increase in fentanyl-related overdose deaths in any of the 22 states nationwide reporting such statistics.

The Centers for Disease Control reported that Delaware had the 15<sup>th</sup> highest rate of per capita retail opioid prescriptions in 2016. Delaware's retail opioid prescription rate was substantially higher than the rate in any surrounding state. By national standards, the CDC's 2016 ranking appear to be an improvement over the comparative statistics reported in 2015. But data from Delaware's prescription drug database indicates that through the fall of 2016, opioid drugs were still being prescribed in Delaware at a rate higher than at any time from 2012 through mid-2014.

The bottom line is that Delaware's overdose fatality rate and opioid prescription rate remain unacceptably high, both in comparison to other states and viewed independently. Each overdose is a human tragedy, each person who becomes addicted to opioids is a human tragedy. The opioid epidemic has also imposed huge costs on

Delaware in the aggregate: it drives a substantial part of the state's criminal activity, and the state is spending over \$100 million per year providing health care specific to opioid abuse.

### **Progress from 2015 Through the Present**

Although an enormous amount of work remains to be done, the state has made tangible progress over the last two years in addressing different facets of the opioid crisis.

- ***Regulating Prescription of Opioids.*** As discussed above, Delaware prescribers have, by a number of different measures, been prescribing opioid drugs at levels higher than their colleagues in most other states. Not only have Delawareans died from overdoses of prescription opioids, but it is now beyond dispute that prescription opioids are the sources of many addictions, and are a gateway into the use of heroin, fentanyl, and other illegal opioids. Therefore, ratcheting down the prescription of opioid drugs has been an important part of the state's overall effort to address the state's addiction and overdose crises.

Delaware had already begun to take steps to address prescription drug issues in 2010 with the creation of the state's first computerized prescription monitoring program, and the adoption of specific regulations in 2011 governing the use of controlled substances for the treatment of pain. Those steps accelerated in 2015 when the Department of Justice and Delaware Division of Public Health recommended to the state's Controlled Substance Advisory Committee that it significantly strengthen draft regulations governing the prescription of opioid drugs. Under the leadership of Secretary of State Jeffrey Bullock, the Controlled Substance Advisory Committee accepted and expanded upon DOJ's recommendations, ultimately resulting in a new and substantially more stringent set of regulations that took effect in April of this year. The new regulations set new benchmarks for the prescription of opioids, informed consent of patients, and monitoring of patients who receive opioids.

This year, Delaware took another step forward by the creation of a new oversight committee for the state's prescription drug monitoring program. This committee, working with the Office of Controlled Substances, is designed to enhance the use of the state's prescription drug database information to make referrals of prescribers where appropriate to licensing authorities. The ultimate goal is to heighten oversight of the very small percentage of opioid prescribers in Delaware who prescribe the majority of the state's opioids. The oversight committee should begin its work this fall.

- ***Breaking Down Payment Barriers to Treatment.*** One of the most often cited problems by persons who have faced drug addiction and their families is the challenge in getting payment for adequate drug treatment from both private and public insurance carriers. The Delaware General Assembly took action this year to begin addressing this problem by passing legislation that (a)

removed obstacles to initial treatment for those seeking it, and (b) provided legal and medical assistance to those whose treatment benefits are being threatened with termination before their treatment is complete. This legislation will begin to take effect in late September, and will unfold in stages.

- ***Expanded Use of Naloxone.*** Spearheaded by the advocacy group atTAcK addiction, Delaware has taken a number of steps in recent years to dramatically expand the use of the drug Naloxone, which can resuscitate overdose victims. The number of police departments that routinely carry Naloxone has increased geometrically since atTAcK addiction began its efforts, assisted in part by start-up funds from the state's State Law Enforcement Assistance Fund. Legislation has also been enacted that will allow pharmacies to dispense Naloxone to appropriate civilians for use in emergencies. Delaware law enforcement agencies have reported scores of cases in which Naloxone has been used to resuscitate overdose victims.
- ***Formal Review of Deaths Caused by Prescription Opiates and Heroin.*** Through legislation, Delaware has created what is generally agreed to be the most robust statewide post-fatality oversight process for opioid overdose fatalities in the country. Because of the scope and complexity of the project, the Overdose Fatality Review Commission has just begun to accept cases from the Medical Examiner to review, but once its work is underway, it will provide the state with a far more scientific and nuanced understanding of the facts leading to opioid overdoses and additional remedies that may be effective in avoiding future fatalities.

### **An Agenda for Moving Forward**

The Prescription Opioid and Heroin Addiction Treatment Needs Assessment conducted by Hornby Zeller Associates provides a useful guide for areas where Delaware can and should expand substance abuse treatment. The scope of the Treatment Needs Assessment is very broad. Over the coming months, DOJ will work to focus the state's efforts on the following priority areas, several of which are derived from recommendations in the Assessment.

1. **The State Should Allocate \$4 Million In One-Time Funds To Expand the Availability of Quality Treatment Facilities That Allow for Extended Residential and Outpatient Treatment.** One of the most common complaints that DOJ has received from individuals who have dealt with their own substance abuse problems, and from the families of those who have died from opioid overdoses, is that the state provides insufficient attention to inpatient treatment, and that the nature of Substance Use Disorder requires an inpatient setting far more often and for longer durations than is currently available in Delaware. In addition, the Treatment Needs Assessment recommends an overall increase in Delaware treatment facilities. *The state should make \$4 million in financing available for the opening of additional treatment facilities through the allocation*

*of one-time grant funds. These facilities should be a mix of inpatient (either treatment or recovery) and outpatient facilities, but with a priority being placed on ensuring that inpatient care is available to those for whom it is appropriate. The state should condition the provision of those funds on compliance by fund recipients with conditions of treatment that will result in the highest levels of care, including strict guidelines for medication assisted treatment. These conditions should be developed jointly by DOJ and DHSS, and could form the baseline for the “Centers of Excellence” that DHSS seeks to create. These funds should be budgeted by the state in the capital budget enacted in June, 2018, and guidelines for qualification for those funds should be developed by regulation prior to June, 2018 so that they can be made available as soon as possible after July 1, 2018.*

- 2. Improved Monitoring and Regulation of Existing Medication Assisted Treatment Programs.** *As the state moves toward more widespread use of medication assisted treatment, which it should, it is important that such treatment be provided in an appropriate manner and with all the monitoring and supports that should accompany MAT. The state should improve its regulatory regimen for oversight of outpatient medication assisted treatment in existing facilities, and specifically should exercise active state oversight that will complement the federal oversight that already takes place. DOJ will work with appropriate state agencies to determine what new regulations are necessary by December 1, 2017, and also to determine what staffing resources may be needed to provide independent state oversight of existing medication assisted treatment facilities (to ensure, for example, that appropriate counseling and monitoring services are being provided to recipients). These regulations could include direct state regulation of MAT facilities, oversight through conditions on payment for MAT services, or a combination of both.*
- 3. Development of a Recovery High School for Delaware.** *Around the country, numerous “recovery schools” that are targeted at high school students who have struggled with substance abuse have been set up and successfully operated. Knowledgeable advocacy groups such as atTAcK addiction have supported the creation of such a school here in Delaware. They deserve a heightened level of assistance from the state. Between now and November 30, 2017, DOJ and other state agencies should work with atTAcK addiction, the national Association of Recovery Schools, and other interested parties to determine the specific steps that would be necessary to establish a Recovery High School in Delaware, with the goal of having any necessary funding or legislative requests prepared for the General Assembly when it returns in January, 2018.*
- 4. Institutionalization of Naloxone Funding for First Responders.** *Largely through the advocacy work of atTAcK addiction, police departments throughout Delaware are now supportive of their front-line officers carrying Naloxone. Most Delaware police departments now have some or all of their officers carrying Naloxone, and scores of “saves” using Naloxone have been documented. However, Naloxone has a limited shelf life and must be replenished on a rolling basis. Police agencies do not have the funds to continually replace Naloxone. The state’s State Law Enforcement Assistance Fund has provided start-up funds*

to many departments for Naloxone purchases, but replacement and other start-up funds should be part of the state's general fund budget – they are a critical part of the state's public health infrastructure. *By November 30, DOJ will determine a specific annual amount that it will recommend that the state incorporate into its general fund budget for funding of police agencies' purchase of Naloxone.*

- 5. Addressing Co-Prescription of Benzodiazapenes and Opioids.** Through its Prescription Monitoring Program, Delaware has detected a high rate of co-prescription of opioids with benzodiazapenes such as Xanax. Co-prescription of benzodiazapenes and opioids is generally discouraged except in extraordinary circumstances, because of the severe health risks associated with co-prescription. *By December 31, 2017, the Addiction Action Committee should determine the circumstances leading to the high rate of co-prescription of opioids and benzodiazapenes in Delaware, and make recommendations to the state targeted at reducing the rate of co-prescription. Among the actions that should be considered are enhanced education of prescribers regarding co-prescription, and expanded regulatory oversight of co-prescriptions. Additionally, steps should be taken as soon as possible to provide for automatic notification of prescribers of either opioids or benzodiazapenes if the prescriber's patient either overdoses on drugs or is otherwise identified as having Substance Use Disorder. Upcoming improvements to the state's Prescription Monitoring Program have made notifications of this type feasible; the state should take the necessary steps to promptly take advantage of these new system capabilities.*
- 6. Evaluation of Involuntary Treatment.** Some front-line law enforcement personnel and advocates have shared with DOJ that they perceive a need in Delaware to allow for involuntary treatment of some persons with Substance Use Disorder for whom other efforts at treatment have been unsuccessful. They argue that Substance Use Disorder is a medical condition that in many instances prevents those suffering from it from being able to voluntarily persist in a treatment program that they can leave at will. The only realistic help for such persons may be involuntary commitment to a treatment facility. This is obviously a complex subject, which raises important medical, legal, and practical issues, but it is one that the state should address squarely. Delaware already has a state law that allows for involuntary commitment for treatment. *By December 31, 2017, DOJ will provide a report to the state suggesting regulations that would need to be put in place to implement the state involuntary treatment statute, and providing recommendations based on conversations with local and national medical and public health experts as to whether such an approach would be helpful and what additional financial and other resources would be needed to make it effective.*
- 7. Funding of Support Services to Ensure Coordination Between Actors in the Substance Abuse Treatment Community.** The Treatment Needs Assessment points out numerous opportunities for Delaware to ensure better use of its existing substance abuse treatment resources by ensuring better coordination of those resources and awareness of those resources by the general public. *The state should fully fund from general fund dollars the \$675,000 recommended by the Treatment Needs Assessment for establishment of a central navigation system for*

*persons identified with Substance Use Disorder to ensure a “warm hand-off”; increasing community-based treatment information for potential clients through the state’s existing services, web sites, and facilities; improving referrals from law enforcement, emergency room personnel, and other medical providers; and development of local multi-disciplinary teams of providers. Any central navigation system should be voluntary in nature and not add to the administrative burden of those providing treatment. In addition, DOJ will work directly with the medical community and the Department of Correction to determine ways to improve real-time communication between probation officials and medical care providers who are encountering probationers in an emergency room or other medical setting. The purpose of these communications will be to improve the probationer’s knowledge of and use of treatment resources, and part of the challenge in improving these communications will be assurance that the communications do not result in punitive sanctions for probation violations.*

- 8. Expanded Use of Naltrexone for Persons in Corrections System.** The Treatment Needs Assessment recommends expansion of a broad group of medications for treatment of persons within the corrections system. Although there are still discussions that need to be conducted with respect to expanded use of medications whose widespread use may present security issues in correctional facilities, there appears to be little disagreement that Naltrexone – which does not appear to present any security issues – is a worthwhile aid to ensuring that persons outside of a secured facility (either pre-trial or post-release) do not seek out opioids. *DOJ will work with the Department of Correction between now and December 31, 2017 to determine the funds that would be necessary to administer Naltrexone or a similar medication to all pre-trial and post-release individuals in the correctional system who would benefit from receiving it, and will recommend that the General Assembly directly fund the administration of Naltrexone to those individuals.*
- 9. Insurance Coverage For Alternative Pain Treatments.** Some health care providers have noted that doctors and other prescribers often feel that they must prescribe opioids for their patients suffering from pain, because the patients’ insurance coverage – whether public or private – will not cover pain treatments that are alternatives to opioids, on the basis that they are experimental or investigational. State Senator Stephanie Hansen has properly noted that the state should seek to maximize the degree to which patients who choose to treat their pain with alternatives to opioids are able to do so with their existing insurance coverage. Members of the state’s Addiction Action Committee are planning to determine which alternatives to opioids should not be considered experimental or investigational. *DOJ will work with Senator Hansen, the Addiction Action Committee, and the Delaware Department of Insurance to develop legislation for the General Assembly to consider in January 2018 that will expand the non-opioid pain options available to patients under their existing insurance coverage.*