



## WISCONSIN LEGISLATIVE COUNCIL INFORMATION MEMORANDUM

### Opium Epidemic: Wisconsin's Legislative Response

In Wisconsin, opioid-related deaths more than tripled from approximately 194 deaths in 2003 to 622 deaths in 2014. Prescription drug abuse and heroin abuse are tightly tied. According to a national study, an individual is 40 times more likely to be addicted to heroin if the individual is addicted to prescription painkillers.<sup>1</sup> The Wisconsin Legislature has taken measures to address the opioid epidemic. The Heroin, Opioid Prevention and Education (HOPE) Agenda, as it is named by its primary authors, is comprised of 17 pieces of legislation enacted during the 2013-14 and 2015-16 Legislative Sessions. The legislation addressed heroin and prescription opioid abuse in several ways, including prevention efforts, expanding access to opioid overdose antidotes, and increasing funding for treatment and diversion programs. Executive action has taken the form of an executive order issued by Governor Scott Walker creating a Governor's Task Force on Opioid Abuse, among other actions.

This Memorandum provides an overview of the areas of law affected by the HOPE Agenda legislation from the 2013-14 and 2015-16 Legislative Sessions. This Memorandum is divided into three parts: prevention of opioid abuse; opioid addiction treatment efforts; and access and use of naloxone, an overdose antidote.

Opioids are natural or synthetic chemicals that reduce feelings of pain and may produce euphoria. Opioids include heroin, an illegal drug, and prescription drugs, such as oxycodone, hydrocodone and morphine. Prescription opioids are controlled substances that are regulated under state and federal law.

#### **PREVENTION**

One method the state uses to prevent opioid abuse is to track prescription drugs that are given to patients. Legislation from the 2013-14 and 2015-16 Legislative Sessions included acts that were aimed at prevention efforts, such as addressing how prescription drugs are dispensed,<sup>2</sup>

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<sup>1</sup> *New Research Reveals the Trends and Risk Factors Behind America's Growing Heroin Epidemic*, Centers for Disease Control and Prevention (July 7, 2015), <http://www.cdc.gov/media/releases/2015/p0707-heroin-epidemic.html>.

<sup>2</sup> 2013 Wisconsin Act 199 and 2015 Wisconsin Acts 266, 267, and 268.

monitoring pain clinics,<sup>3</sup> and other measures.<sup>4</sup> The following section contains an overview of current law as it relates to these prevention efforts.

### ***PRESCRIPTION DRUG MONITORING PROGRAM***

Opioids may be regulated in many circumstances. For example, opioids may be subject to tracking requirements when they are dispensed to a patient to take home, as discussed in this section.

The Prescription Drug Monitoring Program (PDMP) is a statewide program that collects information about specific prescription drugs that are dispensed to patients in Wisconsin. In general, a drug is monitored if it is a schedule II, III, IV, or V controlled substance under state or federal law. [s. CSB 4.02, Wis. Adm. Code.] Controlled substances include opioids and other drugs such as certain stimulants. The PDMP is administered by the Controlled Substances Board (CSB) that is attached to the Department of Safety and Professional Services (DSPS). The CSB must submit a quarterly review of the PDMP to DSPS that includes certain data, such as trends in the use of monitored prescription drugs. [s. 961.385 (6), Stats.]

In general, there are three entities that are required to submit information to the PDMP: (1) pharmacies; (2) practitioners; and (3) law enforcement agencies. [s. CSB 4.05 (1), Wis. Adm. Code and s. 961.37, Stats.]

Pharmacies and practitioners<sup>5</sup> must report to the PDMP when they “dispense”<sup>6</sup> a monitored prescription drug. A pharmacy or practitioner must submit certain information to the PDMP, including the patient’s and practitioner’s names, the type of monitored drug, the quantity dispensed, and the number of refills. [ss. CSB 4.02 (8) and 4.04 (2), Wis. Adm. Code.] In addition, if a patient receives a prescription drug that is a schedule II or III controlled substance, the patient is generally required to present an identification card at the dispensing pharmacy. [s. 450.11 (1b) (b), Stats.] Eventually, practitioners will be required to review a patient’s PDMP records before writing a prescription for a monitored drug to that patient.<sup>7</sup> [s. 961.385 (2) (cs), Stats.]

In addition to pharmacies and practitioners, law enforcement agencies must also submit an individual’s name and birthdate to the PDMP in specific situations, including when an officer suspects the individual is involved in a violation involving a prescribed drug, or when an

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<sup>3</sup> 2015 Wisconsin Act 265.

<sup>4</sup> 2013 Wisconsin Act 198 and 2015 Wisconsin Act 269.

<sup>5</sup> “Practitioner” means a person licensed in this state to prescribe and administer drugs or licensed in another state and recognized by this state as a person authorized to prescribe and administer drugs, but does not include veterinarians. [s. 961.385 (1) (ar), Stats.]

<sup>6</sup> A monitored prescription drug is considered to be dispensed when it is given to a patient pursuant to a prescription. [s. CSB 4.02 (7), Wis. Adm. Code.]

<sup>7</sup> Under 2015 Wisconsin Act 266, this provision is effective on the 30<sup>th</sup> day after the date of publication in the Wisconsin Administrative Register of the notice under SECTION 17 (2g) of the Act, or on April 1, 2017, whichever is later.

individual files a report of a stolen controlled substance prescription. [s. 961.37 (2), Stats.] Between July 1, 2016, and September 30, 2016, 141 different Wisconsin law enforcement agencies submitted 925 reports to the PDMP.<sup>8</sup>

Information in the PDMP is only disclosed to persons who are legally authorized to obtain the information. Pharmacists and practitioners have direct access to PDMP information. [s. CSB 4.09 (1), Wis. Adm. Code.] A number of other individuals and groups may obtain information under specific circumstances, including patients, government agencies, coroners, and law enforcement authorities.<sup>9</sup> The PDMP stores approximately 40 million prescription records. Currently, approximately 2,000 pharmacies and dispensing practitioners report information to the PDMP.<sup>10</sup>

### ***PAIN CLINICS***

In general, a pain clinic is a privately owned facility that treats pain syndromes through the administration of pain medicine, which may include opioids. The state addresses prevention in part by monitoring how opioids are administered at pain clinics. Recent legislation places certification requirements for pain clinics to operate in Wisconsin. DHS certification requires having a medical director who is a physician that practices in Wisconsin and requiring all patient payment to be traceable to the patient, among other criteria. [s. 50.65 (1) (d) and (3) (b), Stats.] A pain clinic may not directly dispense a monitored prescription drug that is administered orally unless one of two exceptions applies: (1) the pain clinic is also a licensed pharmacy; or (2) the treatment relates to a worker's compensation claim. [s. 50.65 (4), Stats.] If a monitored prescription drug is dispensed pursuant to one of these exceptions, the pain clinic must submit information to the PDMP, as described above.

### ***ADDITIONAL PREVENTION EFFORTS***

Additional prevention efforts include a specific allowance for professional boards to issue prescribing guidelines and community drug disposal programs, discussed in this section.

#### ***Professional Guidelines for Prescribing Opioids***

Wisconsin professional licensing boards may issue guidelines regarding best practices in prescribing controlled substances. [s. 440.035 (2m), Stats.] The DSPS Medical Examining Board issued an opioid prescribing guideline that includes: (1) when to initiate or continue opioids; (2) determine opioid dosage, duration, and discontinuation; and (3) assessing risk and harms of opioid use.<sup>11</sup> The Board also promulgated an emergency rule requiring physicians to allocate two of the 30 hours of required biennial continuing education to the opioid prescribing guideline.<sup>12</sup>

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<sup>8</sup> *Wisconsin Prescription Drug Monitoring Program Report 1: July 1 – September 30, CSB* (October 24, 2016).

<sup>9</sup> In general, these individuals must provide proof that they are entitled to PDMP information and must make a request in writing. [s. CSB 4.11, Wis. Adm. Code.]

<sup>10</sup> *Wisconsin Prescription Drug Monitoring Program Report 1: July 1 – September 30, CSB* (October 24, 2016).

<sup>11</sup> *Wisconsin Medical Examining Board Opioid Prescribing Guideline*, Wisconsin Medical Examining Board (July 20, 2016).

<sup>12</sup> Emergency Rule 1631, Medical Examining Board, published Nov. 10 2016.

### ***Drug Disposal Programs***

The Wisconsin Department of Justice (DOJ) may authorize a drug disposal program to accept prescription drugs, including controlled substances, from others for disposal.<sup>13</sup> [s. 165.65 (6), Stats.] To be authorized by DOJ, a drug disposal program must provide certain information, including the manner in which the program operates and whether the program may receive controlled substances. [s. 165.65 (5) (a), Stats.] In general, any person may deliver or authorize another to deliver a prescription drug to an authorized drug disposal program. [s. 450.11 (2) (b) and (3), Stats.]

### **TREATMENT**

Opioid addiction treatment programs may take place in private hospitals, substance abuse clinics, or county public health departments. Treatment may also be administered to offenders through the criminal justice system. Legislation from the 2013-14 and 2015-16 Legislative Sessions included expanding access to certain treatment programs<sup>14</sup>, the creation of state-funded regional pilot programs for treating addiction<sup>15</sup>, and an increase of funding for treatment programs through the criminal justice system.<sup>16,17</sup>

### ***Narcotic Treatment Services for Opiate Addiction***

Programs for opiate addiction that utilize narcotic drugs for treatment or detoxification are referred to as narcotic treatment services. [s. 51.4224 (1) (a), Stats.] Narcotic treatment services are regulated by both state and federal law. In particular, state law requires narcotic treatment services to be certified by the Department of Health Services (DHS). [s. DHS 75.03 (2), Wis. Adm. Code.] Recent legislation has expanded access to narcotic treatment services by eliminating barriers for individuals to participate in treatment. For example, DHS may not place a limit on the duration of treatment for an individual in a narcotic treatment service. In addition, DHS may not require an individual who seeks admission to a narcotic treatment service to reside within a certain radius of that treatment service. The legislation also permits DHS to contract for substance abuse counselors instead of requiring a narcotic treatment service to directly employ all counselors.<sup>18</sup> [s. 51.4224 (3) – (5), Stats.]

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<sup>13</sup> A political subdivision may also authorize a drug disposal program under certain circumstances. [s. 165.65 (3), Stats.]

<sup>14</sup> 2015 Wisconsin Acts 262 and 263.

<sup>15</sup> 2013 Wisconsin Act 195.

<sup>16</sup> 2013 Wisconsin Act 197 expanded the Treatment Alternatives and Diversion (TAD) programs by \$1.5 million annually. 2015 Wisconsin Act 388 expanded TAD program funding by \$2 million for fiscal year 2016-17 on a one-time basis.

<sup>17</sup> The HOPE Agenda also contained criminal justice legislation unrelated to treatment in 2013 Wisconsin Act 196 and 2015 Wisconsin Act 264.

<sup>18</sup> Recent legislation has also included a prevention effort related to narcotic treatment services. Specifically, a narcotic treatment service that treats addiction using methadone must annually report certain information to DHS, including a plan for tapering an individual off methadone. [s. 51.4223 (1), Stats.]

### ***REGIONAL PILOT PROGRAMS***

In 2014, the Legislature called for DHS to create new regional comprehensive opioid treatment programs in underserved, high-need areas. [s. 51.422 (1), Stats.] DHS requested applications from counties, nonprofit agencies, and tribes. To qualify, a program was required to offer specified services, including medication-assisted treatment, abstinence-based treatment, and outpatient counseling. A qualifying program could not offer methadone treatment. [s. 51.422 (1) and (2), Stats.]

DHS determined that counties in northern Wisconsin were the areas of greatest need.<sup>19</sup> In June 2015, DHS executed contracts for programs with three entities: Northeast Wisconsin Opioid Treatment Services, HOPE Consortium, and NorthLakes Community Clinic. In 2015, total grant funding in the amount of \$2,064,000 was available from the time of the grant award, June 1, through the end of the year, December 31. Each program received \$688,000. As of January 1, 2016, the annual amount granted to each program is \$672,000.<sup>20</sup> As of April 2016, the grantees had begun program creation by activities, such as collaborating with community partners, securing space to provide services, and obtaining federal and state approvals and licenses. DHS must annually submit a progress report to the Joint Committee on Finance. [s. 51.422 (3), Stats.]

### ***TREATMENT THROUGH THE CRIMINAL JUSTICE SYSTEM***

Addiction may be addressed in the criminal justice system when offenders who are addicted to drugs or alcohol participate in programs that divert the offender from the justice system to treatment. Authorized under prior law, a Treatment Alternatives and Diversion (TAD) program allows district attorneys and judges to give offenders the option of entering into substance abuse treatment and case management as an alternative to jail or prison confinement. As part of a TAD program, an eligible offender may meet with a case manager, submit to random drug testing and attend court review sessions. Successful completion of a TAD program may result in the reduction or dismissal of criminal charges.<sup>21</sup>

Under the new legislation, additional funding is available for counties to establish and operate TAD programs for offenders who abuse alcohol and other drugs. TAD grants are administered by the DOJ, which has awarded grants to more than 45 counties and tribes.<sup>22</sup> To be eligible for a TAD grant, a county must design a program that reduces recidivism and integrates all mental health services, and uses graduated sanctions and incentives to promote successful substance abuse treatment. A county's program must also be developed in collaboration with a circuit court judge, the district attorney, the state public defender, local law enforcement, and county agencies responsible for providing social services, among other requirements. [s. 16.964 (12) (c), Stats.]

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<sup>19</sup> The areas of greatest need identified by DHS were the Northeastern Region (Florence, Marinette, and Menominee Counties), the North Central Region (Forest, Iron, Oneida, Price, and Vilas Counties), and the Northwestern Region (Ashland, Bayfield, Burnette, Douglas, Sawyer, and Washburn Counties).

<sup>20</sup> Four annual calendar year renewals are available upon satisfactory performance and contract compliance. *Opioid Treatment Programs 2016 Report to the Legislature*, Wisconsin Department of Health Services (April 12, 2016).

<sup>21</sup> *Dane County Circuit Court Drug Treatment and Diversion Court Programs*, [https://courts.countyofdane.com/drug\\_court](https://courts.countyofdane.com/drug_court).

<sup>22</sup> *AG Schimel Announces TAD Grant Recipients*, <https://www.doj.state.wi.us/news-releases/ag-schimel-announces-tad-grant-recipients> (Sept. 7, 2016).

## **OVERDOSE**

An opioid antagonist is a drug, such as naloxone, that can be used to treat an individual who is experiencing an opioid-related overdose. Legislation from the 2013-14 and 2015-16 Legislative Sessions modified laws relating to naloxone.<sup>23</sup> This section contains an overview of current law as it relates to naloxone access, use, and immunity.

### ***LAYPERSON***

Under the new legislation, any person may possess, deliver, and dispense an opioid antagonist.<sup>24</sup> [s. 450.11 (1i) (b), Stats.] Any person may obtain naloxone from a pharmacy without a prescription, pursuant to a statewide “standing order” discussed below. Any person who delivers or dispenses an opioid antagonist, or who administers an opioid antagonist to a person who is experiencing an overdose, is protected from criminal and civil liability. [s. 450.11 (1i) (c), Stats.] The statutes also provide immunity from criminal prosecution for both the possession of drug paraphernalia and possession of a controlled substance for any person aiding another person who is suspected to be suffering from an overdose. [s. 961.443, Stats.]

### ***MEDICAL PROFESSIONALS AND PHARMACISTS***

A prescriber<sup>25</sup> may prescribe and deliver an opioid antagonist to a patient, or a third party who is in a position to assist a patient. A prescriber may also issue a standing order to a pharmacy to dispense an opioid antagonist to any individual **without** a prescription. [ss. 441.18 (2) and 448.037 (2), Stats.] Under the general authority for a physician to issue a standing order, in August 2016, the chief medical officer for DHS issued a statewide standing order authorizing pharmacists to dispense naloxone without a prescription. Pursuant to the statewide standing order, a pharmacist may dispense an opioid antagonist to a person who voluntarily requests it, or offer an opioid antagonist to a patient who is at risk of experiencing a drug-related overdose.<sup>26</sup>

Pharmacists and prescribers who prescribe, dispense, or deliver an opioid antagonist under these provisions are generally immune from civil and criminal liability and professional discipline related to the prescription. [ss. 441.18 (3), 448.037 (3), and 450.11 (1i) (a) 2., Stats.]

### ***EMERGENCY MEDICAL SERVICES***

Emergency medical services include services by multiple levels of emergency medical technicians (EMTs) and certified first responders. Under the legislation, EMTs and certified first responders are authorized to administer an opioid antagonist to an individual undergoing an overdose if they have received the required training. In general, all EMTs are required to have training to administer an opioid antagonist, while certified first responders are permitted to have training. [ss. 256.15 (8) (e) and 256.40(2) (a) – (b), Stats.]

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<sup>23</sup> 2013 Wisconsin Acts 194 and 200, and 2015 Wisconsin Act 268.

<sup>24</sup> Prescribers and pharmacists delivering and dispensing an opioid antagonist must act in accordance with their legal authority, as discussed below. [s. 450.11 (1i) (b), Stats.]

<sup>25</sup> A “prescriber” can be a physician, physician assistant, or advanced practice nurse. [ss. 441.18 (2) and 448.037(2), Stats.]

<sup>26</sup> *Statewide standing order for pharmacists*, Wisconsin Department of Health Sciences, <https://dhs.wisconsin.gov/forms/f01802.pdf> (August 2016).

Law enforcement officers and fire fighters may obtain the training necessary to administer an opioid antagonist and may obtain a supply of an opioid antagonist.<sup>27</sup> A law enforcement officer or fire fighter who administers naloxone pursuant to the statutes is generally immune from criminal and civil liability. [s. 256.40 (3) (b), Stats.]

This memorandum is not a policy statement of the Joint Legislative Council or its staff.

This memorandum was prepared by Julia Norsetter, Staff Attorney, on November 30, 2016.

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<sup>27</sup> Law enforcement officers and fire fighters must enter into a written agreement with a physician or ambulance service provider to obtain training for the administration of an opioid antagonist and obtain a supply. [s. 256.40 (3), Stats.]