POLICY PROFILE

Liability Protections for Naloxone Prescribers

RAND-USC SCHAEFFER OPIOID POLICY TOOLS AND INFORMATION CENTER

Provide legal protections for health care professionals who prescribe naloxone in accordance with state law. Protections can extend to criminal liability; civil liability; and administrative, licensing, and professional disciplinary action by the prescriber's professional licensure (or similar) entity.

A panel of experts rated how they expect this type of policy to affect four outcomes: *naloxone distribution* through pharmacies, *opioid use disorder (OUD) prevalence*, rates of *nonfatal opioid overdose*, and *opioid overdose mortality*. Another panel of experts rated the policy on four implementation criteria: *acceptability* to the public, *feasibility* of implementation, *affordability* from a societal perspective, and *equitability* in health effects.

POLICY RECOMMENDATION ACCORDING TO EXPERT RATINGS

OPPOSE	UNCERTAIN	SUPPORT

SUMMARY OF EXPERT RATINGS

OUTCOMES	EFFECT RATING		
Naloxone Pharmacy Distribution	HARMFUL	LITTLE-TO-NO	BENEFICIAL
OUD Prevalence	HARMFUL	LITTLE-TO-NO	BENEFICIAL
Nonfatal Opioid Overdose	HARMFUL	LITTLE-TO-NO	BENEFICIAL
Opioid Overdose Mortality	HARMFUL	LITTLE-TO-NO	BENEFICIAL
CRITERIA	**IMPLEMENTATION RATING**		
Acceptability	LOW	MODERATE	HIGH
Feasibility	LOW	MODERATE	HIGH
Affordability	LOW	MODERATE	HIGH
Equitability	LOW	MODERATE	HIGH

SUMMARY OF EXPERT COMMENTS

- Experts expect this policy to have minimal effects on naloxone distribution and other outcomes because liability concerns are not a major barrier for prescribing naloxone, even if liability protections may make some prescribers more comfortable prescribing naloxone.
- Experts think the public generally supports efforts to protect health care providers acting in good faith to address the opioid epidemic.
- Experts view this policy as feasible and affordable primarily because there are no implementation challenges and ongoing costs once the laws are passed and because liability protection laws regarding naloxone are already well established.
- Experts generally consider this policy to be moderately equitable because it would not affect the structural oppression or interpersonal biases in the health care system that drive inequities.

THE PANELS AND RESULTS INFORMING THIS POLICY PROFILE ARE FULLY DOCUMENTED IN

Smart, Rosanna, and Sean Grant. (2021). "Effectiveness and implementability of state-level naloxone access policies: Expert consensus from an online modified-Delphi process." *International Journal of Drug Policy,* 98, 103383. As of July 31, 2023: https://www.rand.org/t/EP68824.html

Grant, Sean, and Rosanna Smart. (2022). "Expert views on state-level naloxone access laws: A qualitative analysis of an online modified-Delphi process." *Harm Reduction Journal*, 19(1), 64. As of July 31, 2023: https://www.rand.org/t/EP69032.html

For a complete list of OPTIC Policy Profiles, visit www.rand.org/policy-profiles.

To view this Policy Profile online, visit www.rand.org/t/RBA3054-1.

Outcomes Summaries

NALOXONE PHARMACY DISTRIBUTION

Amount of naloxone dispensed through retail pharmacies (e.g., chain pharmacy stores, independent community pharmacies).

EFFECT RATING	SUMMARY OF EXPERT OPINION	REPRESENTATIVE QUOTATIONS
BENEFICIAL	Modest positive impact as some prescribers might feel more comfortable prescribing naloxone.	"Decrease in perceived (since actual are already very low) legal consequences for prescribing naloxone may facilitate some prescribers who would otherwise be deterred by perceived legal consequences"
LITTLE-TO-NO	Concerns about liability are not a major barrier to naloxone pharmacy distribution, especially as liability protections already exist in many states now.	"Liability concern is not a major hindrance to prescribing/distributing naloxone"
HARMFUL	Pharmacies may refuse to carry naloxone if distributors are not protected from liability as well.	"I worry that if prescribers are protected from liability without the distributors (pharmacists) being protected, the pharmacies will refuse to carry naloxone"

OPIOID USE DISORDER PREVALENCE

Percentage of the general population with a pattern of opioid use leading to clinically and functionally significant impairment, health problems, or failure to meet major responsibilities.

EFFECT RATING	SUMMARY OF EXPERT OPINION	REPRESENTATIVE QUOTATIONS
BENEFICIAL	Potential for revival from overdose could create opportunities to enter recovery services.	"Doctors would be more willing to prescribe naloxone, therefore saving lives and giving folks with opioid use disorder the opportunity to enter recovery"
LITTLE-TO-NO	No credible mechanism linking liability protections and OUD prevalence.	"Doubtful this would have a significant impact on OUD prevalence. This is downstream and not upstream in terms of prevalence in communities. Unlikely that increased dispensation of naloxone will affect this"
HARMFUL	Potential for revival from overdose could (1) have a small, indirect, and mechanistic impact on OUD prevalence due to increased survivorship (rather than new cases of OUD) and (2) lead to continued opioid misuse.	"For some individuals, overdosing and being revived with naloxone may lead to continued misuse of opioids"

Outcomes Summaries

NONFATAL OPIOID OVERDOSE

Per capita rates of nonfatal overdose related to opioids, including opioid analgesics (e.g., oxycodone), illegal opioids (e.g., heroin), and synthetic opioids (e.g., fentanyl).

EFFECT RATING	SUMMARY OF EXPERT OPINION	REPRESENTATIVE QUOTATIONS
BENEFICIAL	More prescriptions for naloxone will lead to fewer overdoses.	"I think these might reduce due to more prescribing of naloxone by prescribers or [health care providers]"
LITTLE-TO-NO	No credible mechanism linking liability protections and nonfatal opioid overdoses—especially because liability protections do not impact naloxone distribution.	"The epidemiology of nonfatal opioid overdoses has nothing to do with prescribing patterns related to naloxone"
HARMFUL	Potential for revival from overdose could (1) have a small, indirect, and mechanistic impact on nonfatal overdoses due to increased survivorship and (2) lead to continued opioid misuse.	"To the extent that pharmacy naloxone access keeps more people alive the absolute number of non-fatal overdoses might go up because there are more people alive to have them"

OPIOID OVERDOSE MORTALITY

Per capita rates of fatal overdose related to opioids, including opioid analgesics (e.g., oxycodone), illegal opioids (e.g., heroin), and synthetic opioids (e.g., fentanyl).

EFFECT RATING	SUMMARY OF EXPERT OPINION	REPRESENTATIVE QUOTATIONS
BENEFICIAL	Modest increase in prescribing could lead to modest reductions in fatal overdoses.	"Less people would die if more access was made to naloxone"
LITTLE-TO-NO	Liability protections do not impact naloxone distribution sufficiently to impact fatal overdoses.	"I think that change in naloxone is small (since liability is not [the] biggest factor), so mortality would have either no change or very slight reduction"
HARMFUL	N/A	N/A

Implementation Criteria Summaries

ACCEPTABILITY

The extent to which the policy is acceptable to the general public in the state or community where the policy has been enacted.

IMPLEMENTATION RATING	SUMMARY OF EXPERT OPINION	REPRESENTATIVE QUOTATIONS
HIGH	Public supports efforts to protect health care providers acting in good faith to address the opioid epidemic.	"I believe that the general public supports protections of prescribers who legally provide Naloxone to those at-risk"
MODERATE	Some members of the general public may be unaware of liabilities or be wary of the potential for liability protections to provide leeway for wrongdoing (due to the stigma around opioid use and belief in naloxone as a moral hazard).	"I am unsure of how much the general population knows about criminal or civil liabilities or potential administrative consequences. But it is my opinion that the general population believes that the health care profession has a lot of protection from liability. It may also impact trust as this could be interpreted as giving prescribers additional leeway for maleficence, especially among low-income individuals who may already mistrust health care providers"
LOW	N/A	N/A

FEASIBILITY

The extent to which it is feasible for a state or community to implement the policy as intended.

IMPLEMENTATION RATING	SUMMARY OF EXPERT OPINION	REPRESENTATIVE QUOTATIONS
HIGH	Little-to-no implementation challenges once passed, especially as liability protection laws regarding naloxone are already well-established.	"I would expect this law to function as intended if it is properly written with the feedback of experts in criminal law, medical practice, etc."
MODERATE	Depends on the type of immunity (criminal, civil, or administrative) and potential pushback from various stakeholders (legal/judicial, medical).	"The pushback I'm aware of doesn't come from the legality of the policy, but from the 'politics' of the state or community. None of the other comments here consider what happens with medical licensing boards, medical associations, etc.—there have been some states where Naloxone access has been tied up from implementation due to this in-fighting"
LOW	N/A	N/A

Implementation Criteria Summaries

AFFORDABILITY

The extent to which the resources (costs) required to implement the policy are affordable from a societal perspective.

IMPLEMENTATION RATING	SUMMARY OF EXPERT OPINION	REPRESENTATIVE QUOTATIONS
HIGH	Little-to-no ongoing costs once passed. Could even be cost-saving with the reduction in costs from legal issues.	"This would entail mostly political capital to pass the law, but little regular, direct, ongoing costs to implement"
MODERATE	Potential for pushback and legal battles during implementation.	"No substantial cost to create the policy; perhaps a legal battle to implement, though"
LOW	N/A	N/A

EQUITABILITY

The extent to which the policy is equitable in its impact on health outcomes across populations of people who use opioids.

IMPLEMENTATION RATING	SUMMARY OF EXPERT OPINION	REPRESENTATIVE QUOTATIONS
HIGH	Facilitates greater access to naloxone, especially among stigmatized populations.	"Stigma on addiction is still very pervasive in health care, particularly among primary care physicians. Providers are less likely to risk liability for those in stigmatized and marginalized groups. Those experiencing health disparities will benefit the most from removing perceived liability. The caveat is that it only helps reduce health disparities among those who have access to a prescriber"
MODERATE	Does not have any impact on structural oppression or interpersonal biases in the health care system.	"This policy does not necessarily have a significant impact on equity, as it would primarily benefit people who have contact with a prescriber. Certainly this would expand access, but does not address known geographic, racial, and income gaps in access to a prescriber"
LOW	Replicates existing disparities in the health care system.	"Any policy that relies on health care delivery will replicate the well-known disparities in access to health care"

This Policy Brief was developed by the RAND-USC Schaeffer Opioid Policy Tools and Information Center (OPTIC), a multidisciplinary research center dedicated to improving the effectiveness of opioid policies by enhancing opioid policy science. OPTIC is a collaboration between the RAND Corporation and the USC Leonard D. Schaeffer Center for Health Policy and is funded by the National Institute on Drug Abuse (P50DA046351). RAND is a research organization that develops solutions to public policy challenges to help make communities throughout the world safer and more secure, healthier and more prosperous. RAND is nonprofit, nonpartisan, and committed to the public interest. RAND's publications do not necessarily reflect the opinions of its research clients and sponsors. RAND® is a registered trademark.

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RB-A3054-1