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New Law Advisory

Advisory No. 2013-13

Issued: May 17, 2013

To: Assignment Judges
Subject: P.L. 2013, c.46 - The "Opioid Antidote and Overdose Protection Act"
Enacted: May 2, 2013
Effective: Sections 1 to 6 – July 1, 2013; Sections 7 and 8 – May 2, 2013
Area of Law: Civil, Criminal
Contact: Kevin Wolfe, Assistant Director for Civil Practice, 609-292-8470
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On May 2, 2013, Governor Christie signed S-2082 into law as P.L. 2013, c.46. Sections 1 through 6 of the law take effect on July 1, 2013. Sections 7 and 8 of the law (immunity from arrest, prosecution or conviction from certain offenses) took effect on May 2, 2013. A copy of the law is attached and is available on the Judiciary Infonet under Legal Reference/Legislation Affecting Courts. Below is a summary of the law.

Generally, the new law provides immunity for witnesses and victims of drug overdoses in order to promote timely medical treatment. It also provides civil, criminal, and professional immunity for health care professionals involved in prescribing, dispensing, or administering naloxone or any similarly acting, FDA-approved drug for the treatment of an opioid overdose.

Section 4 of the law provides that a health care professional or pharmacist who, acting in good faith, prescribes or dispenses an opioid antidote to a patient capable, in the judgment of the health care professional, of administering the opioid antidote in an emergency, shall not be subject to any criminal or civil liability, or any professional disciplinary action for prescribing or dispensing an opioid antidote. In addition, section 4 provides that a person, other than a health care professional, may in an emergency administer an opioid antidote under certain circumstances without being subject to any criminal or civil liability. Under the law, persons acting pursuant Section 4 are also immune from arrest, charge, prosecution or conviction for certain offenses as provided in Sections 7 and 8 of the law under certain circumstances.

Section 7 of the law establishes immunity from arrest, charge, prosecution or conviction for certain offenses for a person who, in good faith, seeks medical assistance for someone experiencing a drug overdose. Section 8 of the law establishes similar immunities for a person who experiences a drug overdose and who seeks medical assistance or is the subject of a good faith request for medical assistance. Both sections

include immunity from revocation of parole or probation based only upon a violation of the offenses described in the law, except that the circumstances may be considered in establishing or modifying the conditions of parole or probation supervision.

The law clarifies that the immunities granted in Sections 7 and 8 of the law are not to be construed to: (1) limit the admissibility of any evidence in connection with the investigation or prosecution of a crime with regard to a defendant who does not qualify for the protections of the law or with regard to other crimes committed by a person who otherwise qualifies for protection under the law, (2) limit any seizure of evidence or contraband otherwise permitted by law, (3) limit or abridge the authority of a law enforcement officer to detain or take into custody a person in the course of an investigation or to effectuate an arrest for any offenses not specified in the law, and (4) limit, modify or remove any immunity from liability currently available to public entities or public employees by law.

Kindly advise appropriate staff of this new law. Please contact Joseph Barraco, Assistant Director, AOC Criminal Division, or Kevin Wolfe, Assistant Director, AOC Civil Division, if you have any questions regarding Chapter 46.

attachment

c: Glenn A. Grant

Civil Criminal Division Judges

Criminal Division Judges

Directors

Assistant Directors

Clerks of the Court

Trial Court Administrators

Criminal Division Managers

Civil Division Managers

Title 24.Chapter 6J (New)
Overdose Prevention.
§§1-6 – C.24:6J-1 to
24:6J-6 & Note to C.2C:35-30 &
2C:35-31§§7&8 –
C.2C:35-30 &2C:35-31
§9 - Note

P.L.2013, CHAPTER 46, *approved May 2, 2013*
Senate, No. 2082 (*Second Reprint*)

AN ACT concerning opioid antidotes and overdose prevention, and supplementing Title 24 of the Revised Statutes ²and Title 2C of the New Jersey Statutes².

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. This act shall be known and may be cited as the ²[“Opioid Antidote and Overdose] “Overdose² Prevention Act.”

2. ²[The Legislature finds and declares that naloxone is an inexpensive and easily administered antidote to an opioid overdose. Encouraging the wider prescription and distribution of naloxone or similarly acting drugs to those at risk for an opioid overdose, or to members of their families or peers, would reduce the number of opioid overdose deaths and be in the best interests of the citizens of this State] The Legislature finds and declares that encouraging witnesses and victims of drug overdoses to seek medical assistance saves lives and is in the best interests of the citizens of this State and, in instances where evidence was obtained as a result of seeking of medical assistance, these witnesses and victims should be protected from arrest, charge, prosecution, conviction, and revocation of parole or probation for possession or use of illegal drugs. Additionally, naloxone is an inexpensive and easily administered antidote to an opioid overdose. Encouraging the wider prescription and distribution of naloxone or similarly acting drugs to those at risk for an opioid overdose, or to members of their families or peers, would reduce the number of opioid overdose deaths and be in the best interests of the citizens of this State. It is not the intent of the Legislature to protect individuals from arrest, prosecution or conviction for other criminal offenses, including engaging in drug trafficking, nor is it the intent of the Legislature to in any way modify or restrict the current duty and authority of law enforcement and emergency responders at the scene of a medical emergency or a crime scene, including the authority to investigate and secure the scene².

3. As used in this act:

“Commissioner” means the Commissioner of ¹[Health and Senior] Human¹ Services.

²“Drug overdose” means an acute condition including, but not limited to, physical illness, coma, mania, hysteria, or death resulting from the consumption or use of a controlled dangerous substance or another substance with which a controlled dangerous substance was combined and that a layperson would reasonably believe to require medical assistance.

“Medical assistance” means professional medical services that are provided to a person experiencing a drug overdose by a health care professional, acting within the scope of his or her lawful practice, including professional medical services that are mobilized through telephone contact with the 911 telephone emergency service.²

“Opioid antidote” means naloxone hydrochloride or any other similarly acting drug approved by the United States Food and Drug Administration for the treatment of an opioid overdose.

“Health care professional” means a physician, physician assistant, advanced practice nurse, or other individual who is licensed or whose professional practice is otherwise regulated pursuant to Title 45 of the Revised Statutes, ²other than a pharmacist,² and who, based upon the accepted scope of professional authority, prescribes or dispenses an opioid ²[antitode] antidote².

“Patient” includes a person who is not at risk of an opioid overdose but who, in the judgment of a physician, may be in a position to assist another individual during an overdose and who has received patient overdose information as required by section 5 of this act on the indications for and administration of an opioid antidote.

4. a. A health care professional ²or pharmacist² who, acting in good faith, directly or through a standing order, prescribes or dispenses an opioid antidote to a patient capable, in the judgment of the health care professional, of administering the opioid antidote in an emergency, shall not, as a result of the professional’s acts or omissions, be subject to any criminal or civil liability, or any professional disciplinary action under Title 45 of the Revised Statutes ²for prescribing or dispensing an opioid antidote in accordance with this act².

b. A person, other than a health care professional, may in an emergency administer, without fee, an opioid antidote, if the person has received patient overdose information pursuant to section 5 of this act and believes in good faith that another person is experiencing an opioid overdose. The person shall not, as a result of the person’s acts or omissions, be subject to any criminal or civil ²[liability, including any prosecution for the unlawful possession or administering of a controlled dangerous substance, or disciplinary action under Title 45 of the Revised Statutes for the unlawful practice of medicine] liability for administering an opioid antidote in accordance with this act. In addition, the immunity provided for in section 7 or section 8 of P.L. , c. (C.) (pending before the Legislature as this bill) also shall apply to a person acting pursuant to this section, provided that the requirements of section 7 or section 8 also have been met².

5. a. A health care professional prescribing or dispensing an opioid antidote to a patient shall ensure that the patient receives patient overdose information. This information shall include, but is not limited to: opioid overdose prevention and recognition; how to perform rescue breathing and resuscitation; opioid antidote dosage and administration; the importance of calling 911 emergency telephone service for assistance with an opioid overdose; and care for an overdose victim after administration of the opioid antidote.

b. In order to fulfill the distribution of patient overdose information required by subsection a. of this section, the information may be provided by the health care professional, or a community-based organization, substance abuse organization, or other organization which addresses medical or social issues related to drug addiction that the health care professional maintains a written agreement with, and that includes: procedures for providing patient overdose information; information as to how employees or volunteers providing the information will be trained; and standards for documenting the provision of patient overdose information to patients.

c. The provision of patient overdose information shall be documented in the patient’s medical record by a health care professional, or through similar means as determined by any

written agreement between a health care professional and an organization as set forth in subsection b. of this section.

d. The Commissioner of ¹[Health and Senior] Human¹ Services, in consultation with Statewide organizations representing physicians, advanced practice nurses, or physician assistants, or community-based programs, substance abuse programs, syringe access programs, or other programs which address medical or social issues related to drug addiction, may develop and disseminate ¹[, in accordance with promulgated regulations,]¹ training materials in video, electronic, or other formats to health care professionals or organizations operating community-based programs, substance abuse programs, syringe access programs, or other programs which address medical or social issues related to drug addiction, to facilitate the provision of patient overdose information.

6. a. The Commissioner of ¹[Health and Senior] Human¹ Services may award grants, based upon any monies appropriated by the Legislature, to create or support local opioid overdose prevention, recognition, and response projects. County and municipal health departments, correctional institutions, hospitals, and universities, as well as organizations operating community-based programs, substance abuse programs, syringe access programs, or other programs which address medical or social issues related to drug addiction may apply to the Department of ¹[Health and Senior] Human¹ Services for a grant under this section, on forms and in the manner prescribed by the commissioner.

b. In awarding any grant, the commissioner shall consider the necessity for overdose prevention projects in various health care facility and non-health care facility settings, and the applicant's ability to develop interventions that will be effective and viable in the local area to be served by the grant.

c. In awarding any grant, the commissioner shall give preference to applications that include one or more of the following elements:

(1) prescription and distribution of naloxone hydrochloride or any other similarly acting drug approved by the United States Food and Drug Administration for the treatment of an opioid overdose;

(2) policies and projects to encourage persons, including drug users, to call 911 for emergency assistance when they witness a potentially fatal opioid overdose;

(3) opioid overdose prevention, recognition, and response education projects in syringe access programs, drug treatment centers, outreach programs, and other programs operated by organizations that work with, or have access to, opioid users and their families and communities;

(4) opioid overdose recognition and response training, including rescue breathing, in drug treatment centers and for other organizations that work with, or have access to, opioid users and their families and communities;

(5) the production and distribution of targeted or mass media materials on opioid overdose prevention and response;

(6) the institution of education and training projects on opioid overdose response and treatment for emergency services and law enforcement personnel; and

(7) a system of parent, family, and survivor education and mutual support groups.

d. In addition to any moneys appropriated by the Legislature, the commissioner may seek money from the federal government, private foundations, and any other source to fund the grants established pursuant to this section, as well as to fund on-going monitoring and evaluation of the programs supported by the grants.

7. ²[This act shall take effect on the first day of the second month next following enactment, except that the Commissioner of ¹[Health and Senior] Human¹ Services shall take any anticipatory action in advance thereof as shall be necessary for the implementation of the act.] a. A person who, in good faith, seeks medical assistance for someone experiencing a drug overdose shall not be:

(1) arrested, charged, prosecuted, or convicted for obtaining, possessing, using, being under the influence of, or failing to make lawful disposition of, a controlled dangerous substance or controlled substance analog pursuant to subsection a., b., or c. of N.J.S.2C:35-10;

(2) arrested, charged, prosecuted, or convicted for inhaling the fumes of or possessing any toxic chemical pursuant to subsection b. of section 7 of P.L.1999, c.90 (C.2C:35-10.4);

(3) arrested, charged, prosecuted, or convicted for using, obtaining, attempting to obtain, or possessing any prescription legend drug or stramonium preparation pursuant to subsection b., d., or e. of section 8 of P.L.1999, c.90 (C.2C:35-10.5);

(4) arrested, charged, prosecuted, or convicted for acquiring or obtaining possession of a controlled dangerous substance or controlled substance analog by fraud pursuant to N.J.S.2C:35-13;

(5) arrested, charged, prosecuted, or convicted for unlawfully possessing a controlled dangerous substance that was lawfully prescribed or dispensed pursuant to N.J.S.2C:35-24;

(6) arrested, charged, prosecuted, or convicted for using or possessing with intent to use drug paraphernalia pursuant to N.J.S.2C:36-2 or for having under his control or possessing a hypodermic syringe, hypodermic needle, or any other instrument adapted for the use of a controlled dangerous substance or a controlled substance analog pursuant to subsection a. of N.J.S.2C:36-6;

(7) subject to revocation of parole or probation based only upon a violation of offenses described in subsection a. (1) through (6) of this section, provided, however, this circumstance may be considered in establishing or modifying the conditions of parole or probation supervision.

b. The provisions of subsection a. of this section shall only apply if:

(1) the person seeks medical assistance for another person who is experiencing a drug overdose and is in need of medical assistance; and

(2) the evidence for an arrest, charge, prosecution, conviction, or revocation was obtained as a result of the seeking of medical assistance.

c. Nothing in this section shall be construed to limit the admissibility of any evidence in connection with the investigation or prosecution of a crime with regard to a defendant who does not qualify for the protections of this act or with regard to other crimes committed by a person who otherwise qualifies for protection pursuant to this act. Nothing in this section shall be construed to limit any seizure of evidence or contraband otherwise permitted by law. Nothing herein shall be construed to limit or abridge the authority of a law enforcement officer to detain or take into custody a person in the course of an investigation or to effectuate an arrest for any offense except as provided in subsection a. of this section. Nothing in this section shall be construed to limit, modify or remove any immunity from liability currently available to public entities or public employees by law.²

²8. a. A person who experiences a drug overdose and who seeks medical assistance or is the subject of a good faith request for medical assistance pursuant to section 4 of this act shall not be:

(1) arrested, charged, prosecuted, or convicted for obtaining, possessing, using, being under the influence of, or failing to make lawful disposition of, a controlled dangerous

substance or controlled substance analog pursuant to subsection a., b., or c. of N.J.S.2C:35-10;

(2) arrested, charged, prosecuted, or convicted for inhaling the fumes of or possessing any toxic chemical pursuant to subsection b. of section 7 of P.L.1999, c.90 (C.2C:35-10.4);

(3) arrested, charged, prosecuted, or convicted for using, obtaining, attempting to obtain, or possessing any prescription legend drug or stramonium preparation pursuant to subsection b., d., or e. of section 8 of P.L.1999, c.90 (C.2C:35-10.5);

(4) arrested, charged, prosecuted, or convicted for acquiring or obtaining possession of a controlled dangerous substance or controlled substance analog by fraud pursuant to N.J.S.2C:35-13;

(5) arrested, charged, prosecuted, or convicted for unlawfully possessing a controlled dangerous substance that was lawfully prescribed or dispensed pursuant to N.J.S.2C:35-24;

(6) arrested, charged, prosecuted, or convicted for using or possessing with intent to use drug paraphernalia pursuant to N.J.S.2C:36-2 or for having under his control or possessing a hypodermic syringe, hypodermic needle, or any other instrument adapted for the use of a controlled dangerous substance or a controlled substance analog pursuant to subsection a. of N.J.S.2C:36-6;

(7) subject to revocation of parole or probation based only upon a violation of offenses described in subsection a. (1) through (6) of this section, provided, however, that this circumstance may be considered in establishing or modifying the conditions of parole or probation supervision

b. The provisions of subsection a. of this section shall only apply if the evidence for an arrest, charge, prosecution, conviction or revocation was obtained as a result of the seeking of medical assistance.

c. Nothing in this section shall be construed to limit the admissibility of any evidence in connection with the investigation or prosecution of a crime with regard to a defendant who does not qualify for the protections of this act or with regard to other crimes committed by a person who otherwise qualifies for protection pursuant to this act. Nothing in this section shall be construed to limit any seizure of evidence or contraband otherwise permitted by law. Nothing herein shall be construed to limit or abridge the authority of a law enforcement officer to detain or take into custody a person in the course of an investigation or to effectuate an arrest for any offense except as provided in subsection a. of this section. Nothing in this section shall be construed to limit, modify or remove any immunity from liability currently available to public entities or public employees by law.²

²9. Sections 1 through 6 of this act shall take effect on the first day of the second month next following enactment, except that the Commissioner of Human Services shall take any anticipatory action in advance thereof as shall be necessary for the implementation of the act and sections 7 and 8 shall take effect immediately.²