



MEMORANDUM

DATE: March 1, 2018

TO: Meg Snead,
Governor's Policy Office

FROM: Kerry Maloney,
Board Counsel, State Board of Pharmacy

K. Kalonji Johnson
Policy Director

RE: Stakeholder Document – Naloxone Delivery

The Disaster Declaration

On January 11, 2018 Governor Wolf declared a Proclamation of Disaster Emergency and ordered the Director of the Pennsylvania Emergency Management Agency (PEMA) to activate the Public Health Emergency Command Center. Under the Declaration, PEMA, the Pennsylvania Commission on Crime and Delinquency, the Pennsylvania State Police and the Departments of Health, Human Services and Drug and Alcohol Programs, respectively have been directed to staff and support the Command Center “as needed, until demobilized.”

Under Pennsylvania law (Title 35 Pa.C.S.A. § 7301(f)(1)) the Governor may “[s]uspend the provisions of any regulatory statute prescribing the procedures for conduct of Commonwealth business, or the orders, rules or regulations of any Commonwealth agency, if strict compliance with the provisions of any statute, order, rule or regulation would in any way prevent, hinder or delay necessary action in coping with the emergency.”

The Disaster Declaration is effective for a period of 90 days, but may be renewed by the Governor for an additional 90-day period, as needed, until the disaster has been averted.

How Proclamation will affect Naloxone delivery

During the period covered by the Governor's Opioid Crisis Proclamation, Pennsylvania pharmacies may deliver naloxone pursuant to a valid prescription to an “identified employee” of a hospital, jail, prison, or drug treatment facility for “identified individuals” who are being released from the hospital, jail, prison, or drug treatment facility in Pennsylvania.

The “identified employee” must be a person directly employed or contracted by the hospital, jail, prison, or drug treatment facility.

The “identified individual” must be a person being discharged from the hospital, jail, prison, or drug treatment facility.

“Identification” of an individual or employee must be sufficient such that the pharmacy may be able to effectively bill the payer/provider.

Alternatively, or in addition to the above, pharmacies may sell naloxone to a qualified, Pennsylvania-licensed practitioner at the hospital, jail, prison, or drug treatment facility, to then be dispensed, by the practitioner, to individuals who are being released from the jail, prison, hospital, or drug treatment facility.

Waiver of the Pharmacy Regulations Under the Declaration

The regulations of the PA State Board of Pharmacy state in section 27.18(e) that, “No pharmacist may enter into an arrangement or agreement with a non-licensed person whereby ... prescription drugs ... may regularly be left with ... accepted by or delivered to the non-licensed person.... “

Section 27.18(e) would normally prohibit the delivery of naloxone if initiated by a prison, jail, hospital, or treatment facility, and not the patient.

Section 27.19 requires generally that a pharmacist perform a “prospective drug review (PDR) before filling, delivering or sending a new prescription.” The PDR requires the pharmacist to review a profile of the patient prior to dispensing the medication to the patient. The patient’s profile may not be available when the pharmacy delivers the naloxone to the facility.

Under the Governor’s Declaration, sections 27.18(e) and 27.19 are suspended during the period covered by the Proclamation, to allow delivery of naloxone to a Pennsylvania hospital, jail, prison, or drug treatment facility and *subject to* the discretion of the pharmacist:

Again, this *requires that* the hospital, prison, jail, or drug treatment facility requesting the naloxone delivery for the patient supplies the pharmacy with the patient’s name and other necessary identifying information so that the pharmacy may bill the applicable payor.