Research Protocol for Overdose Surveillance Legal Map

Prepared by the Association of State and Territorial Health Officials Staff

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Overdose Surveillance Laws Map

I. **Date of Protocol:** May 2024

II. **Scope:** Collect, code, and analyze current state/territorial statutes and regulations as of January 1, 2023, related to overdose surveillance policy; specifically, the existence and operation of overdose fatality review committees and the role of prescription drug monitoring program ("PDMP") requirements and penalties within the jurisdiction.

III. **Primary Data Collection**

a. **Project Dates:** May 2022 – May 2024

b. **Dates Covered in the Dataset:** This is a cross-sectional data set analyzing statutes and regulations related to select overdose surveillance policies as of January 1, 2023. The effective date listed for each jurisdiction is the date of the most recent version of the law or regulation within the scope of the data set (i.e., on or before January 1, 2023).

c. **Data Collection Methods:** The research teams consisted of two teams who researched the statutes and regulations. Research team A ("Team A") consisted of a licensed attorney as well as four law student interns. Research team B ("Team B") consisted of a licensed attorney. All researchers used LexisNexis to perform their legal research, and the vast majority of researchers entered their research into spreadsheets for eventual upload into MonQcle, a web-based software-coding platform.

d. **Databases Used:** LexisNexis was used to identify statutes and regulations within the scope of the project. Researchers then pulled the source law from jurisdiction legislative websites when available for upload into MonQcle. Researchers also used internet search engines to identify secondary sources, specifically governmental websites relevant to the PDMP operating in the jurisdiction. Other secondary sources included historical legal maps related to PDMPs and summary reports of relevant state laws (noted below).

e. **Search Terms and Methodology:** The following search terms were used to capture the laws coded in the data set:

i. **Overdose Fatality Review Boards**

1. To identify laws related to overdose fatality review boards the research teams entered the following search strings for each jurisdiction:

   a. Overdose w/10 fatality w/10 review; and

   b. ("opioid" OR "fentanyl") AND ("death" OR "overdose") AND ("fatality" OR "review")

2. The term "overdose fatality review" was also run more generally in an internet search engine to look for relevant search results.

3. The following secondary source was used to look for relevant laws and regulations: https://legislativeanalysis.org/wp-content/uploads/2021/02/OFR-State-Laws-Final.pdf

ii. **PDMP Related Laws**

1. To identify laws related to prescriber checking requirements prior to prescribing opioids, along with the relevant penalties for failure to comply with PDMP requirements and the scope of information included in the PDMP with respect to naloxone dispensing, the research teams entered the following search strings for each jurisdiction:

   a. Prescri* w/20 opioid; and

   b. Prescription w/10 monitoring

2. The term "Prescription Drug Monitoring Program" was also run more generally in an internet search engine to look for relevant search results or jurisdiction-run-websites with additional information (e.g., Frequently Asked Questions, Provider Communications). If the jurisdiction had a unique way of referring to its PDMP (e.g., INSPECT), this term also generally run in an internet search engine when necessary to achieve relevant results.

3. The following secondary source was reviewed for historical information on PDMP laws related to the questions posed to help guide further research in relevant laws and whether they were within scope as noted above. https://pdaps.org/

f. **Additional Inclusion or Exclusion Criteria:** To refine the scope of relevant laws, the following topics were included or excluded:

   i. Requirements related to veterinary prescribing practices were excluded.

   ii. Requirements related to prescribing of medication assisted treatment were excluded.

   iii. Penalties for facilities that failed to comply with PDMP requirements were excluded.

   iv. Municipal laws and regulations were excluded.

   v. Requirements to report that prescribing practices of certain practioners to licensing authorities (e.g., those who meet certain criteria for volume or other factors) were excluded unless the reporting requirement was tied to failure to comply with the requirements specific to the jurisdiction's PDMP.

   vi. Requirements to check the PDMP at specific time intervals (e.g., every six months) were excluded if not specified to occur prior to issuing a prescription.

IV. Coding

a. **Development of Coding Scheme:** ASTHO staff developed the coding questions and circulated them among other subject matter experts for review. When the questions were finalized, ASTHO entered them into MonQcle.

b. **Coding Methods:** Below are specific rules used when coding the questions and responses in the Overdose Surveillance data set.

Question 1: Does the jurisdiction establish overdose fatality review committees in law (statute or regulation)? (Yes/No)

- Jurisdictions were coded "yes" if a statute or regulation explicitly established a committee or other body to review overdose fatalities within the jurisdiction.

- If no such law existed, the jurisdiction was coded as "no."

Question 1.1: Who is required to be on an overdose fatality review committee? (Options: Medical Examiner or Coroner; Physician or Healthcare Provider; Peer Support Specialist; Law Enforcement; Community Member(s))

- Law Enforcement was selected if the law referenced the inclusion of the Attorney General or other law enforcement representatives (e.g., sheriff or police).
- Physician or Healthcare Provider was selected if there was reference to a healthcare professional member on the committee or an individual with experience in a particular specialty (e.g. addiction medicine).
- Peer Support Specialist was selected only if the reference was specific to that type of support person.
- A general requirement that a committee include an individual with lived experience was classified as requiring community member participation.
- A requirement to include a forensic pathologist was equivalent to a medical examiner or coroner.

Question 1.2: Does jurisdictional law allow the overdose fatality review committee to access the prescription drug monitoring program information? (Yes/No)

- Jurisdictions were coded "yes" if statute or regulations authorized the release of PDMP information to overdose fatality review committees.
- Jurisdictions were coded "no" if there was no statute or regulation found that would allow for overdose fatality review committees to receive PDMP information.

Question 2: Does the law require prescribers to check prescription drug monitoring programs before prescribing opioids? (Yes/No)

- Jurisdictions were coded "yes" if statute or regulations require prescribers to query or check a PDMP prior to prescribing an opioid. This includes laws where the requirement was specific to certain schedules of drugs that included opioids (e.g., Schedule II) or covered "narcotics."
- Jurisdictions were coded "no" if there was no statute or regulation that required prescribers to query or check a PDMP prior to prescribing an opioid.
- Laws that required prescribers to query or check a PDMP report prior to prescribing medication assisted treatment or upon admission to a facility providing treatment or opioid use disorder were excluded.

Question 3: Does the law require incorporation of naloxone dispensing data into prescription drug monitoring programs? (Yes/No)

- Jurisdictions were coded "yes" if statutes or regulations require the reporting of naloxone (or opioid antagonist) dispensing information to the PDMP.

- Jurisdictions were coded "no" if no law was found that specifically required the reporting of naloxone dispensing information to the PDMP. This included if a jurisdiction required reporting of naloxone dispensing information through other methods (e.g., sub-regulatory guidance) that was found through a governmental source; this was coded as "no" with a caution flag explaining the approach taken by that jurisdiction.

- Jurisdictions were also coded "no" if statutes or regulations required documentation of naloxone dispensing but did not specify that the documentation occur in the PDMP. However, if a jurisdiction clarified the PDMP was the source for that documentation (including in sub-regulatory guidance) that was noted and coded as "yes" with a caution flag.

Question 4: Can a provider be penalized for not using the prescription monitoring programs as required under the law? (Yes/No)

- Jurisdictions were coded "yes" if statute or regulations included penalties for prescribers or dispensers who failed to use PDMP as required by law. This includes dispensers who fail to report as required, prescribers who fail to complete any mandatory queries, and individuals who inappropriately use or disclose PDMP information. Penalties included investigations, letters of concern, classification as unprofessional conduct, referral to law enforcement, referral to a professional licensing body, and other negative actions associated with failures to use the PDMP appropriately.

- Jurisdictions were coded as "no" if no law was found that established penalties for prescribers or dispensers who failed to use PDMP as required by law.

- Jurisdictions that had statutes or regulations that were limited to penalties for general non-compliance with laws or regulations related to their professional responsibilities or practices were coded as "no."

- Jurisdictions were coded as "yes" if a provider could be referred to the licensing authority for violations.

- Loss of access to the PDMP alone was not considered a penalty. If the law included this provision with other penalties (e.g., a formal investigation, requirement of a course to regain compliance for violations), these types of provisions were included.

- Investigations or other negative actions associated with improper prescribing or practices considered to be outside the standard of care related to opioids were not included.

Question 5: Does the law require noncompliance with the prescription drug monitoring program requirements to be reported to a licensing authority? (Yes/No)

- Jurisdictions were coded "yes" if statute or regulations explicitly required a referral to a licensing authority for non-compliance with PDMP-related responsibilities.

- Jurisdictions were coded "no" if the law did not explicitly require a referral to a licensing authority for non-compliance with PDMP-related responsibilities. This includes laws and regulations where such a referral was one of two required actions (e.g., the law required a referral to law enforcement OR a professional licensing body).

V. Quality Control

a. Research. All jurisdictions were researched by both teams. Team A conducted research using this protocol and entered the data into spreadsheets and/or directly into MonQcle. Team B conducted the same research using the same search protocol as Team A. Meetings were held to determine how to consistently account for different situations and resolve all divergences and differences of opinion with respect to the relevant statutes and regulations. Divergences in the data collected were reviewed as noted below and all duplicate entries were reduced to a single entry for each jurisdiction.

b. Coding and Divergence Review. Researchers uploaded research Team A's data from the master spreadsheet into the MonQcle system, or directly into MonQcle for those jurisdictions researched by the licensed attorney on Team A. Team B also entered research into a spreadsheet which was later added to the MonQcle system. Team B generally worked behind Team A and cloned the records entered into MonQcle without answers. Team B then compared Team A's answers and sources with team B's and resolved discrepancies and divergences with the assistance of other licensed attorneys and subject matter experts when needed. An ASTHO attorney who was not part of either research team conducted a final review to verify accuracy of the collection and coding process prior to publication. When a record was not available for Team B to clone and review as noted above, Team B compared the answers and sources of Team A from the research spreadsheet, resolved any discrepancies or divergences as noted above, and incorporated that review and any resolution into the entry.

c. **Data Limitations**. The statutes and rules included in this data set were identified through the above research protocol. There may be additional statutes, rules, case law, or guidance related to overdose surveillance that were outside the scope of this research. This data set is for informational purposes and does not constitute legal advice. To best understand the legal framework regarding overdose surveillance, please consult an attorney licensed in that jurisdiction.

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