

Date of Hearing: March 23, 2021

ASSEMBLY COMMITTEE ON HEALTH
Jim Wood, Chair
AB 381 (Davies) – As Introduced February 2, 2021

SUBJECT: Licensed facilities: duties.

SUMMARY: Requires alcohol and other drug residential treatment facilities (RTF) licensed by the Department of Health Care Services (DHCS) to maintain at least two unexpired doses of naloxone (NH) on the premises. Requires RTFs to have at all times, at least one staff member on the premises who knows the specific location of the NH and who has been trained by a pharmacist on the administration of NH, as specified, or who has the equivalent NH administration training gained through education and practice as a licensed medical professional. Specifically, **this bill:**

- 1) Authorizes the administration of NH in the event of a life-threatening emergency to the list of services permissible in RTFs.
- 2) Specifies that the administration of NH is an emergent care required in the case of a life-threatening emergency for purposes of the medical or health care services a licensed RTF may provide.
- 3) Requires a licensed RTF to maintain at all times, at least two unexpired doses of NH on the premises.
- 4) Requires a licensed RTF to, at all times, have at least one staff member on the premises who knows the specific location of the NH and who has been trained by a pharmacist on the administration of NH as specified, or who has the equivalent NH administration training gained through education and practice as a licensed medical professional.
- 5) Provides that a trained staff member is not liable for damages in a civil action or subject to criminal prosecution for the administration, in good faith, of NH to a person appearing to experience an opioid-related overdose.

EXISTING LAW:

- 1) Requires the DHCS to license RTFs that provide 24-hour residential non-medical services to adults who are recovering from problems related to alcohol, drug, or alcohol and drug misuse or abuse, and who need alcohol, drug, or alcohol and drug recovery, treatment, or detoxification services.
- 2) Requires RTF licensees to provide at least one of the following: recovery, treatment, or detoxification services.
- 3) Requires DHCS to adopt regulations requiring records and procedures appropriate for the type of service provided. Provides that the records and procedures can include all of the following: admission criteria; intake process; assessments; recovery, treatment, or detoxification planning; referral; documentation of provision of recovery, treatment, or

detoxification services; discharge and continuing care planning; or, indicators of recovery, treatment, or detoxification outcomes.

- 4) Authorizes licensed RTFs to provide incidental medical services to a resident at the facility premises by, or under the supervision of, one or more physicians and surgeons who are knowledgeable about addiction medicine.
- 5) Defines incidental medical services to mean services that are in compliance with the community standard of practice and are not required to be performed in a licensed clinic or licensed health facility to address medical issues associated with either detoxification from alcohol or drugs or the provision of alcoholism or drug abuse recovery or treatment services, including all of the following:
 - a) Obtaining medical histories;
 - b) Monitoring health status to determine whether the health status warrants transfer of the patient in order to receive urgent or emergent care;
 - c) Testing associated with detoxification from alcohol or drugs;
 - d) Providing alcoholism or drug abuse recovery or treatment services;
 - e) Overseeing patient self-administered medications; and,
 - f) Treating substance abuse disorders, including detoxification.
- 6) Excludes the provision of general primary medical care from the definition of incidental medical services.
- 7) Requires, through regulations, each applicant for an RTF to submit to DHCS a written plan of operation containing such information as: a statement of program goals and objectives; an outline of activities and services to be provided by the RTF; a table of the administrative organization of the RTF; a staffing plan, job descriptions, and minimum staff qualifications; and, sample menus and a schedule for one calendar week indicating the times of day that meals are to be served.
- 8) Requires a licensed RTF to develop a plan to address when a resident relapses, including when a resident is on the licensed premises after consuming alcohol or using illicit drugs.
- 9) Requires a prescriber to offer a prescription for NH or another drug federally approved for the complete or partial reversal of opioid depression for patients when certain conditions are present and to provide specified education to those patients and provide education about how these drugs may be used to prevent an overdose.
- 10) Requires prescriber to discuss the risks associated with opioids with their patient prior to issuing or dispensing a first prescription in a single course of treatment for an opioid to a minor. Requires prescribers to provide information about the availability of certain nonpharmacological treatments for pain, along with an offer for a referral.

FISCAL EFFECT: Unknown. This bill has not been analyzed by a fiscal committee.

COMMENTS:

1) **PURPOSE OF THIS BILL.** According to the author, the opioid epidemic has ravaged the state and has unfortunately torn families apart. According to the Orange County Health Agency “In Orange County, the rate of opioid-related emergency department (ED) visits has increased 141% since 2005 and there were 7,457 opioid overdose/abuse cases treated in the ED between 2011 and 2015. Importantly, seven of every 10 overdose deaths investigated by the Orange County Sheriff-Coroner during this five-year period involved opioids.” Luckily, with the development of NH, commonly referred to as “Narcan,” these types of unfortunate tragedies can be prevented. The author concludes this life-saving drug should be on-site at all drug treatment centers in order to ensure timely access and help to patients who relapse during treatment. This bill guarantees this accessibility as well as ensures that someone at these facilities is trained on how to administer NH to a patient in need. In short, this bill can save lives.

2) BACKGROUND.

a) **Trends in California Drug Overdose Deaths.** A March 2021 Policy Brief entitled, “Trends in California Drug Overdose Deaths” from California Health Policy Strategies reports that overdose deaths are rising faster in California than it is in the United States (US). In California, overdose deaths are up 50% and in the US overdose, deaths are up 15% since the 12-month period June 2016- June 2017. Preliminary mortality records indicate that in the 12-month period of June 2019 to June 2020, there were at least 7,254 drug overdose deaths in California. Accidental drug overdoses kill twice as many people as car accidents. Fentanyl, a synthetic opioid, is primarily responsible for the increase in overdose deaths. The rate of overdose deaths related to synthetic opioids has risen by 541% over the last three years. Fentanyl is now the leading cause of opioid-related overdose deaths and 37% of all drug-related overdose facilities involve fentanyl. Overdose death rates vary significantly across counties and demographic groups. The adjusted rate of overdose death is highest in Lake County standing at over 60 deaths per 100,000. The average rate of all drug-related overdose deaths across the state was 19.6 deaths per 100,000 state residents. Additionally, the adjusted rate is highest amongst males, Native Americans, Blacks, and those 50-65 years old. Fentanyl deaths are especially prevalent among people 20-34 years old.

b) **NH.** NH, better known as Narcan, is an opioid antidote that can reverse a drug overdose. NH reverses depression of the central nervous and respiratory systems that have shut down during an overdose. NH is commonly used when a person excessively uses morphine, oxycodone, methadone, or illegal substances such as heroin and fentanyl. NH is meant to sustain breathing for 30-90 minutes, during which time emergency medical services should be sought for the patient. The drug is non-narcotic, does not produce intoxication, and has no potential for addiction or abuse. NH only causes pharmacological effects if there are opioids in someone’s body. If NH is administered to someone who is not overdosing, no adverse effects will happen.

NH is typically administered intramuscularly, which causes the drug to act within one minute and last up to 45 minutes. The emergency treatment works like the well-known EpiPen, an epinephrine auto-injector for serious allergic reactions, as it is injected into the muscle and does not require training, thus making it more user-friendly. NH may also

be administered intravenously, subcutaneous (under the skin), or intranasally. A typical injectable or nasal spray NH kit costs \$15-\$25 per dose.

c) DHCS Mental Health and Substance Use Disorders Services (MHSUDS)

Information Notice 19-009. On March 5, 2019, the DHCS issued a MHSUDS information notice advising that effective immediately, licensed RTF programs and certified outpatient alcohol or other drug treatment programs are permitted to utilize NH at their program sites. All forms of NH are allowed at the program. The notice further stated that, if a program chooses to provide NH, all forms of the medication are to be recorded, stored, and destroyed in the same manner as prescription medications. The notice states it is the responsibility of the program to develop policies, procedures, and protocols for how the program will store the medication, and accurately document the administration and disposal of NH. The staff person who administers NH must have successfully completed NH administration training and the training must be documented in their individual personnel file. This bill builds on that information notice by requiring RTFs to maintain two unexpired doses of NH at all times and specifies the training staff personnel administering the NH must obtain.

d) RTFs. RTFs are licensed by DHCS, based on what is commonly referred to as the social model, are currently allowed to provide recovery, treatment, and detoxification services. (The Department of Public Health licenses medical model RTFs known as chemical dependency recovery hospitals.) The services provided by these RTFs include group and individual counseling, educational sessions, and alcoholism or drug abuse recovery and treatment planning. Social model RTFs are allowed to provide clients first aid and emergency care, and since the passage of AB 848 (Stone), Chapter 744, Statutes of 2015, RTFs can apply to DHCS for an additional license to provide incidental medical services by a licensed physician and surgeon or other health care practitioner, as specified. As part of their licensing function, DHCS conducts reviews of RTF operations every two years, or as necessary. DHCS's Substance Use Disorder Compliance Division checks for compliance with statute and regulations to ensure the health and safety of RTF residents and investigates all complaints related to RTFs, including deaths, complaints against staff, and allegations of operating without a license. DHCS has the authority to suspend or revoke a license for conduct in the operation of an RTF that is deleterious to the health, morals, welfare, or safety of either an individual in, or receiving services from, the facility or to the people of the State of California. According to DHCS, as of March 9, 2017, DHCS licenses approximately 1,000 RTFs throughout the state.

3) SUPPORT. The San Diego District Attorney (SDDA) states, in support, that those trying to rid themselves of opioid addictions often enter drug treatment facilities as patients. Opioid withdrawal is particularly painful to patients. Because of that pain, there is a high rate of relapse. Opioid relapse often occurs within the treatment facilities themselves. This type of relapse is particularly dangerous to the patient because physiological drug tolerance decreases after prolonged periods of sobriety. Thus, smaller amounts of opioids are needed by the patient to become intoxicated, and likewise, to possibly overdose. Drug treatment facilities are regulated by the state and these treatment facilities should be required to carry NH because of the dangerous probability of opioid abuse by patients. The SDDA, in conclusion, states that NH saves lives by reversing the depressive effects of opioids on the central nervous system. One quick squirt in the nose can save a life. This is victim rights-based legislation that will save lives.

4) **SUPPORT IF AMENDED.** The County Behavioral Health Directors Association of California (CBHDA), in a support if amended position, recommends amending the bill to remove the provision requiring staff training on the administration of naloxone hydrochloride as the naloxone training does not require specialized training. CBHDA further recommending removing the provision stating that only trained staff members shall not be liable for damages in civil action or subject to criminal prosecution and amending the bill to state “a person who possesses or distributes an opioid antagonist Shall not be subject to professional review, be liable in a civil action, or be subject to criminal prosecution for this possession or distribution.”

5) **AMENDMENTS:** The author has agreed to the following amendments:

a) In order to strengthen the liability portion of the bill, the author proposes to revise Section 11834.26(f) to read as follows:

(f)(1) A licensee shall, at all times, maintain at least two unexpired doses of naloxone hydrochloride on the premises and shall, at all times, have at least one staff member on the premises who knows the specific location of the naloxone hydrochloride and who has been trained by a pharmacist on the administration of naloxone hydrochloride as described in Section 4052.01 of the Business and Professions Code, or who has the equivalent ~~naloxone administration~~ training on the administration of naloxone hydrochloride gained through education and practice as a licensed medical professional.

(2) A trained staff member shall not be liable for damages in a civil action or subject to criminal prosecution for the administration, in good faith, of naloxone hydrochloride to a person appearing to experience an opioid-related overdose. This paragraph shall not apply in a case where the person who renders emergency care treatment by the use of naloxone hydrochloride acts with gross negligence or engages in willful and wanton misconduct.

b) To provide clarity, replace naloxone with naloxone hydrochloride wherever it appears throughout the bill.

6) **PREVIOUS LEGISLATION.**

a) AB 888 (Low), Chapter 97, Statutes of 2019, extends to all patients regardless of age, the existing requirement for a prescriber to discuss the risks associated with opioids with their patient prior to issuing or dispensing a first prescription in a single course of treatment for an opioid to a minor. Requires prescribers to provide information about the availability of certain nonpharmacological treatments for pain, along with an offer for a referral.

b) AB 1998 (Rodriguez) of 2018, would have required health care practitioners who prescribe, order, administer, or furnish opioids to establish or adopt a safe opioid prescribing policy. AB 1998 was held in the Senate Appropriations Committee.

c) AB 2760 (Wood), Chapter 324, Statutes of 2018, required a prescriber to offer a prescription for NH or another drug federally approved for the complete or partial reversal of opioid depression for patients when certain conditions are present and to

provide specified education to those patients, and provide education about how these drugs may be used to prevent an overdose.

- d) AB 2741 (Burke) of 2018, would have: limited prescriptions of opioid medications to minors to a maximum five-day supply; required practitioners to assess whether a minor has been prescribed treatment for a substance use disorder; required practitioners to discuss the risks and dangers associated with opioids with the minor and the minor's parent or guardian; and, required the prescriber to receive verbal consent from a minor's parent or guardian or authorized adult prior to prescribing a course of treatment with an opioid to a minor. AB 2741 was held in the Senate Business, Professions and Economic Development Committee

7) **DOUBLE REFERRAL:** This bill is double referred. Upon passage in this Committee, the bill will be referred to the Judiciary Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Advocates for Responsible Treatment
County Health Executives Association of California
San Diego County District Attorney's Office

Opposition

None on file.

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