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DATE: June 6, 2024

SUBJECT: Guidance Memorandum Regarding Distribution of Harm Reduction Supplies, Pursuant to N.J.S.A. 24:6J-5.1 and P.L.2023, c.224

Summary

The New Jersey Department of Health (Department), Office of Opioid Response and Policy (ORP), is issuing this guidance memorandum to inform general acute care hospitals (hospital or hospitals) licensed to operate in New Jersey (NJ) of new and existing laws concerning the distribution of harm reduction supplies in emergency departments (ED) and acute care hospitals.

Specifically, N.J.S.A. 24:6J-5.1 requires that hospitals offer an opioid antidote (e.g., naloxone hydrochloride) upon discharge to patients that have overdosed and received treatment in the ED or were admitted to the hospital. N.J.S.A. 24:6J-5.1 also requires hospitals to provide overdose prevention information to the patient that has overdosed prior to discharge. Pursuant to the recently enacted P.L. 2023, c.224, hospitals and other health care facilities may also distribute drug testing supplies (e.g., fentanyl or xylazine test strips) and hypodermic needles/syringes for use in preventing, reducing, or mitigating the adverse effects of substance use.

1. Harm Reduction Supplies

Pursuant to P.L.2023, c.224, "harm reduction supplies" means "any materials or equipment used or intended for use in preventing, reducing, or mitigating the adverse effects associated with the personal use of controlled dangerous substances, controlled substance analogs, or toxic chemicals, which adverse effects may include, but are not limited to, disease transmission and overdose. 'Harm reduction supplies' include, but are not be limited to: naloxone hydrochloride and other opioid antidotes; test strips and other supplies or equipment designed to identify or analyze the presence, strength, effectiveness, or purity of controlled dangerous substances, controlled substance analogs, toxic chemicals, or other substances used to potentiate or enhance the effects of controlled dangerous substances, controlled substance analogs, or toxic chemicals; and supplies or equipment provided by an entity authorized to provide harm reduction services in accordance with the provisions of P.L.2006, c.99 (C.26:5C-25 et al.)."

2. Naloxone and Other Opioid Antidote Leave Behind (N.J.S.A. 24:6J-5.1)

The Overdose Prevention Act, P.L. 2013, c. 46, was signed into law on May 2, 2013, and provides immunity from arrest, prosecution, and conviction for specified criminal offenses when the person, in good faith, seeks medical assistance for a person believed to be experiencing a drug overdose.

Effective July 2, 2021, N.J.S.A. 24:6J-1 et seq. amended P.L. 2013, c. 46 by expanding access to and distribution of naloxone and other opioid antidotes by providing immunity from liability for prescribers, practitioners, and dispensers of opioid antidotes. The amendments further require the Department to issue a standing order for the distribution of opioid antidotes; require prescribers or other health care practitioners who prescribe or dispense an opioid antidote to provide overdose prevention information to the recipient of the antidote; and require health care practitioners and first responders who administer an opioid antidote to offer an opioid antidote to the patient to take home, alongside overdose prevention information, among other provisions.

Pursuant to N.J.S.A. 24:6J-5.1, if an opioid antidote is administered by a health care practitioner or first responder to a patient believed to be experiencing a drug overdose and they are admitted to a health care facility or receive treatment in an ED, a staff member designated by the health care facility must offer the patient, or their family member/friend, an opioid antidote upon discharge, along with overdose prevention information (described below) and information regarding the cost of the antidote. Hospitals are also required to document the provision of the antidote and the information provided to the patient in the patient's medical record.

Hospitals can bill Medicaid and/or other insurance providers to cover the cost of dispensing opioid antidotes to patients upon discharge. Pursuant to N.J.S.A. 26:2S-38, insurance carriers are required to ensure that every contract to provide prescription drug benefits provide coverage for an opioid antidote to covered persons without prior authorization. Additionally, hospitals may pursue the following options to cover costs of opioid antidotes.

(a) *Registering for New Jersey's Naloxone365 program*: If the hospital has a retail licensed pharmacy, the pharmacy can register for the Naloxone365 program, New Jersey's pharmacy-based naloxone initiative. Through this pilot program established by the NJ Department of Human Services (DHS) and the New Jersey Board of Pharmacy, participating pharmacies bill the State using a special NJMMIS/Medicaid billing code to receive reimbursement for naloxone at the current Medicaid rate and the patient aged 14 or older is able to receive the naloxone for free, anonymously.

(b) *Partnering with Opioid Overdose Recovery Programs (OORP)*: In every county in New Jersey, OORP programs are funded by DHS's Division of Mental Health and Addiction Services (DMHAS) to engage individuals in the ED after reversal from an opioid overdose. Recovery specialists and patient navigators provide non-clinical assistance, recovery supports, and referrals and community follow-up for ongoing care to patients. The program makes available free naloxone to the individuals that they serve in the ED.

3. Substance Use Disorder (SUD) Treatment and Harm Reduction Resources (N.J.S.A. 24:6J-5.1)

Pursuant to N.J.S.A. 24:6J-5.1, hospitals are required to provide overdose prevention information, alongside the opioid antidote, to a patient that has been treated for an overdose and admitted to the hospital or treated in the ED. The information must include a listing of SUD treatment programs/resources and Harm Reduction Centers (formerly syringe access programs); opioid overdose prevention and recognition information; and instructions on opioid overdose response. The Department, in partnership with DHS and the New Jersey Office of the Attorney General, maintains up-to-date overdose prevention information that can be requested by contacting 5mintohelp@doh.nj.gov.

4. Drug Testing Equipment (P.L.2023, c.224)

Drug testing equipment can be used as a harm reduction strategy to test illicit drug samples for components that are either not expected or that could cause disproportionate harm, in order to provide information to people who use drugs about the substances that they consume. Research has shown that use of drug testing equipment like fentanyl test strips is associated with behavioral changes that reduce overdose risk, such as using less or using in the company of others.

As of January 8, 2024, P.L.2023, c.224 now exempts certain harm reduction supplies from New Jersey's criminal drug paraphernalia laws. Specifically, the new law exempts equipment, products and materials used or intended for use in testing, identifying, or analyzing the strength, effectiveness or purity of controlled dangerous substances or controlled substance analogs from the definition of "drug paraphernalia" under N.J.S.2C:36-1, thereby removing any criminal penalties associated with possessing or distributing such supplies. As a result, hospitals and health care practitioners may distribute drug testing equipment, including but not limited to fentanyl or xylazine test strips, to a patient or their family member or friend upon discharge.

5. Hypodermic Syringes and Needles (P.L.2023, c.224)

The provision of sterile syringes to people who use drugs is one example of a harm reduction practice that prevents the adverse effects associated with substance use. This public health practice has proven to reduce transmission of infectious diseases, including HIV, hepatitis C, and skin/soft tissue infections; reduce risk behaviors; and improve engagement in other care, such as SUD treatment and health care.

Effective January 18, 2022, N.J.S.A. 2C:36-1 was amended to remove criminal penalties associated with possession of hypodermic needles or syringes. More recently, effective January 8, 2024, N.J.S.A. 2C:36-1 was amended to further remove criminal penalties for distribution of hypodermic needles or syringes. Therefore, in addition to providing a listing of harm reduction centers to patients as referenced above, hospitals and healthcare practitioners may distribute sterile syringes to patients. Hospitals are not required to register to become a Department-authorized Harm Reduction Center in order to distribute syringes/needles. However, licensed health care facilities are required to follow all respective licensing standards at N.J.A.C. 8:43G regarding procurement, storage, use, and disposal of needles and syringes. Hospitals interested in distributing a wider variety of safer use supplies (e.g., safer smoking kits) are encouraged to apply to become an authorized Harm Reduction Center by reaching out to hrc@doh.nj.gov.

Harm reduction practices such as those outlined above are evidence-based and should be incorporated into all levels of care for people who use drugs. Distribution of harm reduction supplies – including sterile syringes, testing strips, and naloxone – has been proven to decrease infectious disease transmission, reduce overdoses, decrease risk behaviors, and increase entry into other forms of care. Therefore, the Department encourages all hospitals in New Jersey to incorporate these best practices into care for patients who use drugs, including but not limited to, post-overdose care, treatment of skin/soft tissue infections, withdrawal management, or for another substance use related emergency.

Questions regarding this memo may be directed to Michele Calvo at Michele.Calvo@doh.nj.gov. Any questions regarding facility licensing may be directed to Michael Kennedy at Michael.Kennedy@doh.nj.gov.