

AN ACT

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To expand patient access to opioid use disorder treatment; to require the Department of Health Care Finance and the Department of Insurance, Securities, and Banking to undertake a study to determine the feasibility of expanding opioid use disorder medication offerings in the District; to require hospitals to develop protocols for identifying, treating, discharging, and referring patients with opioid use disorder; to require the Department of Corrections to ensure that individuals who receive treatment for opioid addiction prior to entering a Department of Corrections facility continue to receive that treatment; to amend Title 25 of the District of Columbia Official Code to remove possession of certain drug paraphernalia for personal use as grounds for denial of a license; to amend Title 47 of the District of Columbia Official Code to remove possession of certain drug paraphernalia for personal use as grounds for denial of a license; to amend the Drug Paraphernalia Act of 1982 to permit persons testing personal use quantities of a controlled substance to use, or possess with the intent to use, testing equipment or other objects used, intended for use, or designed for use in identifying or analyzing the strength, effectiveness, or purity of a controlled substance, and to permit community-based organizations to deliver or sell, or possess with the intent to deliver or sell, testing equipment or other objects used, intended for use, or designed for use for that same purpose; and to amend the District of Columbia Appropriations Act of 2001 to remove the prohibition on the operation of needle exchange programs within 1,000 feet of a public or private elementary or secondary school; to amend an Act to relieve physicians of liability for negligent medical treatment at the scene of an accident in the District of Columbia to allow physicians licensed to practice medicine to prescribe, and pharmacists licensed to practice pharmacy, to dispense or distribute, an opioid antagonist; to amend the Prescription Drug Monitoring Program Act of 2013 to require the mandatory registration of prescribers and dispensers, including new licensees, by March 31, 2019.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Opioid Overdose Treatment and Prevention Omnibus Act of 2018”.

TITLE I. OPIOID USE DISORDER TREATMENT

Sec. 101. Definitions.

For the purposes of this act, the term:

(1) “DBH” means the Department of Behavioral Health.
(2) “DHCF” means the Department of Health Care Finance.
(3) “DISB” means the Department of Insurance, Securities, and Banking.
(4) “DOC” means the Department of Corrections.
(5) “DOH” means the Department of Health.
(6) “Health care provider” means a physician, advance practice registered nurse, clinic, hospital, DBH-certified provider organizations, or neighborhood health center, licensed by the District.

(7) “Health insurer” means any person that provides one or more health benefit plans or insurance in the District, including an insurer, a hospital and medical services corporation, a fraternal benefit society, a health maintenance organization, a multiple employer welfare arrangement, or any other person providing a plan of health insurance subject to the authority of the Commissioner of DISB.

(8) “Hospital” means a facility that provides 24-hour inpatient care, including diagnostic, therapeutic, and other health-related services, for a variety of physical or mental conditions, and may, in addition, provide outpatient services, particularly emergency care.

(9) “In-network health care provider” means the health care providers or health care facilities that have contracted with a health insurer to provide services to plan members for negotiated rates.

(10) “Opioid use disorder” means a pattern of opioid use leading to clinically significant impairment or distress, as manifested by symptoms identified in the most recent publication of the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association.

(11) “Opioid use disorder treatment medication” means all medications approved by the United States Food and Drug Administration for the treatment of opioid use disorders.

(12) “Prescriber” means a person who is licensed, registered, or otherwise authorized by the District to prescribe and administer prescription drugs in the course of a professional practice.

(13) “Telehealth” means the delivery of healthcare services through interactive audio, video, or other electronic media used for the purpose of diagnosis, consultation, or treatment; provided, that services delivered through audio-only telephones, electronic mail messages, or facsimile transmissions are not included.

Sec. 102. Expanding access to opioid use disorder treatment.

(a)(1) By January 1, 2020, each health insurer shall:

(A) Create a list of its in-network health care providers that treat opioid use disorder, including the in-network health provider’s contact information and an indication of whether the in-network health care provider has been certified by the United States Drug Enforcement Agency to prescribe opioid use disorder treatment medication; and

(B) Maintain at least one in-network health care provider who is accepting new patients and is authorized to treat opioid use disorder, including through the use of opioid

use disorder treatment medication. Services delivered through telehealth may satisfy the requirement of this subparagraph.

(2) Each health insurer shall update the list required by paragraph (1)(A) of this subsection on a quarterly basis.

(3)(A) Upon the request of a beneficiary or prospective beneficiary of a health insurer, the health insurer shall transmit the list created and updated pursuant to paragraph (1) of this subsection to that beneficiary or prospective beneficiary by mail or by electronic means within 7 days after the receipt of the request.

(B) Each health insurer shall publish the list and instructions on how to access the list created and updated pursuant to paragraphs (1) and (2) of this subsection on its website.

(b) By January 1, 2020, and annually thereafter:

(1) Each health insurer shall submit a report to DBH, DHCF, DISB, and the Council that includes the following:

(A) A list of the health insurer's in-network health care providers that are certified by the United States Drug Enforcement Agency to prescribe opioid use disorder treatment medications, and which type of opioid use disorder treatment medications the health care providers prescribe;

(B) The number of beneficiaries that were treated for opioid use disorder in the prior fiscal year; and

(C) A description of any efforts by the health insurer in the prior fiscal year to ensure that its in-network capacity to treat opioid use disorder meets the needs of its beneficiaries.

(2) The Mayor shall submit a report to the Council that includes:

(A) An analysis of programs in other jurisdictions that have sought to expand access to opioid use disorder treatment medications;

(B) An evaluation of District health care providers' treatment capacity for opioid use disorders in the District, including opportunities for expanding and improving offerings;

(C) An identification of any barriers to expanding access to additional opioid use disorder treatment medications;

(D) An assessment of the financial costs associated with different methods of treating opioid use disorder;

(E) An assessment of the current reimbursement rates for health care providers for opioid use disorder treatment; and

(F) An identification and analysis of any gaps in opioid use disorder treatment options in the District.

Sec. 103. Hospital protocols for opioid use disorder.

(a) By October 1, 2019, and annually thereafter, each hospital shall develop protocols governing the identification, treatment, discharge, and referral of patients with opioid use disorder, and submit the protocols to DOH.

(b) By June 1, 2020, and annually thereafter, DOH shall submit an analysis of the sufficiency of each hospital's protocols to the chairperson of the Council committee with jurisdiction over matters related to health.

Sec. 104. DOC treatment of inmates with opioid use disorder.

(a) An individual charged with treating DOC inmates for opioid use disorder shall be certified in the treatment of opioid use disorder by the American Society of Addiction Medicine, the American Academy of Addiction Psychiatry, the American Medical Association, the American Osteopathic Association, the American Psychiatric Association, or any other organization that the Director of DOH determines is appropriate. The requirements for certification in the treatment of opioid use disorder may be completed in a classroom setting or through online instruction.

(b) DOC, in consultation with DOH, shall ensure that all opioid use disorder treatment medications are administered to inmates:

(1) In the manner in which the medication was prescribed; and

(2) For the entirety of the time an inmate is in DOC's custody, unless an individual charged with treating DOC inmates for opioid use disorder determines otherwise, in their clinical judgment, based on the specific inmate's treatment plan, or if an inmate is awaiting designation to Federal Bureau of Prisons custody.

Sec. 105. Rules.

The Mayor, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), may issue rules to implement the provisions of this title.

TITLE II. SAFE ACCESS

Sec. 201. Title 25 of the District of Columbia Official Code is amended as follows:

(a) Section 25-335 is amended as follows:

(1) The existing text is designated as subsection (a).

(2) The newly designated subsection (a)(2) is amended by striking the phrase "possession or" and inserting the phrase "the possession, other than for personal use, or" in its place.

(3) A new subsection (b) to read as follows:

"(b) For the purposes of this section, the term "personal use" means the possession of drug paraphernalia in circumstances where there is no evidence of an intent to distribute or manufacture a controlled substance."

(b) Section 25-822 is amended as follows:

(1) The existing text is designated as subsection (a).

(2) The newly designated subsection (a)(2) is amended by striking the phrase “possession or” and inserting the phrase “possession, other than for personal use, or” in its place.

(3) A new subsection (b) to read as follows:

“(b) For the purposes of this section, the term “personal use” means the possession of drug paraphernalia in circumstances where there is no evidence of an intent to distribute or manufacture a controlled substance.”.

Sec. 202. Section 47-2844(a-1)(1)(B) of the District of Columbia Official Code is amended by striking the phrase “possession, sale” and inserting the phrase “possession, other than for personal use, sale” in its place.

Sec. 203. The Drug Paraphernalia Act of 1982, effective September 17, 1982 (D.C. Law 4-149; D.C. Official Code § 48-1101 *et seq.*), is amended as follows:

(a) Section 4 (D.C. Official Code § 48-1103) is amended as follows:

(1) Subsection (a) is amended by adding a new paragraph (1A) to read as follows:

“(1A)(A) Notwithstanding paragraph (1) of this subsection, it shall not be unlawful for a person to use, or possess with the intent to use, the materials described in section 2(3)(D) for the purpose of testing personal use quantities of a controlled substance.

“(B) For the purposes of this paragraph, the term “personal use quantities” means possession of a controlled substance in circumstances where there is no other evidence of an intent to distribute, or to facilitate the manufacturing, compounding, processing, delivering, importing, or exporting of any controlled substance.”.

(2) Subsection (b) is amended by adding a new paragraph (1A) to read as follows:

“(1A) Notwithstanding paragraph (1) of this subsection, it shall not be unlawful for a community-based organization, as that term is defined in section 4(a)(1) of An Act To relieve physicians of liability for negligent medical treatment at the scene of an accident in the District of Columbia, effective February 18, 2017 (D.C. Law 21-186; D.C. Official Code § 7-404(a)(1)), to deliver or sell, or possess with intent to deliver or sell, the materials described in section 2(3)(D).”.

(b) Section 5 (D.C. Official Code § 48-1104) is amended as follows:

(1) The existing text is designated as subsection (a).

(2) The newly designated subsection (a)(2) is amended by striking the phrase “use, dispensing, or possession” and inserting the phrase “use (other than for personal use), dispensing, or possession (other than for personal use)” in its place.

(3) A new subsection (b) to read as follows:

“(b) For the purposes of this section, the term “personal use” means the use or possession of drug paraphernalia in circumstances where there is no evidence of an intent to distribute or manufacture a controlled substance.”.

ENROLLED ORIGINAL

Sec. 204. Section 150(a) of the District of Columbia Appropriations Act of 2001, approved November 22, 2000 (114 Stat. 2440; D.C. Official Code § 48-1121(a)), is repealed.

Sec. 205. Section 7(g-2) of the Legalization of Marijuana for Medical Treatment Initiative of 1999, effective July 27, 2010 (D.C. Law 18-210; D.C. Official Code § 7-1671.06(g-2)), is amended to read as follows:

“(g-2) A dispensary, cultivation center, or testing laboratory may be permitted to relocate to any election ward upon approval from the Mayor; provided, that no more than 2 dispensaries and 6 cultivation centers may be registered to operate within an election ward.”.

TITLE III. SUBSTANCE ABUSE AND OPIOID OVERDOSE PREVENTION

Sec. 301. Section 4 of An Act To relieve physicians of liability for negligent medical treatment at the scene of an accident in the District of Columbia, approved November 8, 1965 (79 Stat. 1302; D.C. Official Code § 7-404), is amended as follows:

(a) Subsection (a)(2) is amended by striking the period and inserting the phrase “practicing within the scope of practice for his or her profession.” in its place.

(b) A new subsection (b-1) is added to read as follows:

“(b-1) An opioid antagonist issued in accordance with subsection (b) of this section shall be regarded as being issued for a legitimate medical purpose in the usual course of professional practice.”.

(c) Subsection (d)(1)(A) is amended to read as follows:

“(A) A pharmacist may dispense or distribute, but not prescribe, an opioid antagonist pursuant to a written protocol and standing order.”.

(d) New subsections (f-1) and (f-2) are added to read as follows:

“(f-1)(A) Nothing in this section shall be construed to require a health care professional to prescribe, dispense, or distribute an opioid antagonist to a person at risk of experiencing an opioid related overdose or a family member, or friend, or other person in a position to assist a person at risk of experiencing an opioid related overdose, or an employee or volunteer of a community based organization.

“(B) A health care professional that does not prescribe, dispense, or distribute an opioid antagonist based upon his or her professional judgment shall be immune from civil or criminal liability, unless the health care professional’s decision not to prescribe, dispense, or distribute an opioid antagonist constitutes recklessness, gross negligence, or intentional misconduct.

“(f-2) Nothing in this section shall be construed to expand the scope of practice of a health care professional.”.

(e) Subsection (g) is amended by striking the phrase “February 18, 2017” and inserting the phrase “the effective date of the Opioid Overdose Treatment and Prevention Omnibus Act of 2018, passed on 2nd reading on December 18, 2018 (Enrolled version of Bill 22-459)” in its place.

TITLE IV. PRESCRIPTION DRUG MONITORING PROGRAM

Sec. 401. The Prescription Drug Monitoring Program Act of 2013, effective February 22, 2014 (D.C. Law 20-66; D.C. Official Code § 48-853.01 *et seq.*), is amended as follows:

(a) A new section 4a is added to read as follows:

“Sec. 4a. Registration requirement for prescribers and dispensers.

“(a) Any prescriber who is currently licensed, or becomes licensed before March 31, 2019, in the District to prescribe a controlled substance or other covered substance in the course of his or her professional practice, and any dispenser who is currently licensed, or becomes licensed before March 31, 2019, in the District to dispense a controlled substance or other covered substance to an ultimate user or his or her agent shall register with the Program by March 31, 2019.”.

(b) Section 5 (D.C. Official Code § 48-853.04) is amended as follows:

(1) Designate the existing text as subsection (a).

(2) New subsections (b) and (c) are added to read as follows:

“(b) No prescriber or dispenser shall provide false or misleading information to the Department with the intent to obtain unauthorized access to, or alter the information in the possession of the Program.

“(c) A violation of subsection (b) of this section shall constitute grounds for:

“(1) The revocation, suspension, or denial of a District controlled substances registration;

“(2) Disciplinary action by the relevant health occupations board pursuant to section 514(c) of the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1205.14(c)); and

“(3) The imposition of civil fines pursuant to section 104 of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Official Code § 2-1801.04).”.

(c) Section 6(b)(5) (D.C. Official Code § 48-853.05(b)(5)) is amended to read as follows:

“(5) A specific investigation of a specific patient or of a specific dispenser or prescriber to an agent of a federal law-enforcement agency with authority to conduct drug diversion investigations.”.

(d) Section 8 (D.C. Official Code § 48-853.07) is amended as follows:

(1) Subsection (a) is amended as follows:

(A) Paragraph (1) is amended by striking the phrase “misuse; and” and inserting the phrase “misuse or abuse of covered substances;” in its place.

(B) Paragraph (2) is amended by striking the phrase “misuse.” and inserting the phrase “misuse or abuse of covered substances;” in its place.

(C) New paragraphs (3) and (4) are added to read as follows:

“(3) Criteria for indications of a possible violation of law or a possible breach of professional standards by a prescriber or dispenser; and

“(4) A method for analysis of data collected by the Program using the criteria for indications of a possible violation of law or a possible breach of professional standards by a prescriber or dispenser.”.

(2) Subsection (b) is amended to read as follows:

“(b)(1) Upon the development of the criteria and data analysis, the Program may review prescription monitoring program data for indications of:

“(A) Possible misuse or abuse of a covered prescription drug; and

“(B) A possible violation of law or possible breach of professional standards by a prescriber or a dispenser.

“(2) If the Program’s review of prescription monitoring data indicates a possible violation of paragraph (1) of this subsection, the Director may, in addition to any discretionary disclosure of information pursuant to this act:

“(A) Report the possible misuse or abuse by a patient to the specific prescriber or dispenser of the covered prescription drug for the purpose of intervention to prevent such misuse or abuse;

“(B) Notify the prescriber or dispenser of the possible violation of law or possible breach of professional standards; and

“(C) Provide education to the prescriber or dispenser.”.

TITLE V. APPLICABILITY; FISCAL IMPACT STATEMENT; EFFECTIVE DATE

Sec. 501. Applicability.

(a) Section 102(b)(2) shall apply upon the date of inclusion of its fiscal effect in an approved budget and financial plan.

(b) The Chief Financial Officer shall certify the date of the inclusion of the fiscal effect in an approved budget and financial plan and provide notice to the Budget Director of the Council of the certification.

(c)(1) The Budget Director shall cause the notice of the certification to be published in the District of Columbia Register.

(2) The date of publication of the notice of the certification shall not affect the applicability of section 102(b)(2).

Sec. 502. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 503. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December

ENROLLED ORIGINAL

24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia