

NEWS BITES

NOVEMBER 2021

LAPPA NEWS

LAPPA welcomed a new Legislative Attorney to its staff at the beginning of October - Joseph M. Maschman, Esq. Joe is a former legal fellow at the democracy reform nonprofit Common Cause, where he focused on money in politics and government ethics. There, he drafted model legislation, filed complaints for violations of campaign finance law before the Federal Election Commission, and wrote public reports on democracy reform policy. He has also worked in campaign finance on multiple political campaigns and has vetted federal judicial nominees for a civil rights organization. Mr. Maschman received his B.A. in Political Science from Creighton University and his Juris Doctor from the Georgetown University Law Center. He is a member of the bar of the Commonwealth of Virginia.

PUBLICATIONS & PRESENTATIONS

LAPPA is pleased to announce the release of the [Model Opioid Litigation Proceeds Act](#), a model law for state legislators that ensures that opioid litigation settlement funds are directed to address substance use disorder and the overdose epidemic. Through the Model Act, states would: (1) establish a dedicated fund that is designated for targeted purposes; (2) ensure that proceeds deposited into the fund remain separate from the state treasury's general fund and are used only as intended for infrastructure, programs, services, supports, and resources for substance use disorder prevention, treatment, recovery, and harm reduction; (3) ensure that distributions from the fund are only used to supplement, and not supplant, any existing or future local, state, or federal government funding; and (4) ensure that a council of diverse stakeholders is established to support public involvement, accountability, and transparency in allocating and accounting for the spending of settlement funds. The research and drafting of the Model Opioid Litigation Proceeds Act were completed through consultation and a partnership with the O'Neill Institute at Georgetown Law Center, the Center for U.S. Policy, and Brown and Weinraub, PLLC. To read the press release from the Office of National Drug Control Policy, who provided the funding for this project, click [here](#).

LAPPA recently published a new state legislative summary focused on syringe services programs (SSPs), which are harm reduction programs that provide a wide range of services including, but not typically limited to, the provision of new, unused hypodermic needles and syringes and other drug use supplies, such as cookers, tourniquets, alcohol wipes, and sharps waste disposal containers, to people who use drugs. In this summary, readers will find information with respect to SSP laws for each state, including citations to applicable statutes and/or regulations, whether the state allows SSPs by statute, whether there are any municipal or county ordinances or regulations in place within the state, program components, miscellaneous provisions, and information on any pending legislation. Click [here](#) to read the summary.

On October 16, 2021, Senior Legislative Attorney Jon Woodruff participated in a presentation entitled *Deflection: Playing a Critical and Growing Role in the National Drug Control Strategy* at the [2021 Cocaine, Meth, and Stimulant Summit](#). During his presentation, Mr. Woodruff detailed the current status of laws and proposed legislation authorizing deflection programs throughout the U.S. Mr. Woodruff also described LAPP's soon-to-be released Model Law Enforcement and Other First Responder Deflection Program Act.

Additionally, Mr. Jon Woodruff gave a presentation on October 25, 2021, to the Collaborative for Effective Prescription Opioid Policies (CEPOP) during its monthly all participants call. Convened by the Community Anti-Drug Coalitions of America and the Honorable Mary Bono, CEPOP brings together a broad array of stakeholders interested in the appropriate use of opioid medications that reduces misuse and promotes treatment options, both for those living with pain and for those confronting substance use disorder. During his presentation, Mr. Woodruff gave an overview of the current status of the myriad lawsuits filed against opioid manufacturers, distributors, retailers, and consultants. Mr. Woodruff also described some of the major events likely to occur in the litigation over the next six months.

FEDERAL NEWS BITS



Acting Director of the Office of National Drug Control Policy (ONDCP), Regina LaBelle, recently sent a letter to several members of the U.S. Congress asking for permanent classification of fentanyl-related drugs as Schedule I controlled substances. According to the letter, which was sent to Senate Majority Leader Chuck Schumer, Senate Minority Leader Mitch McConnell, House Speaker Nancy Pelosi, and House Minority Leader Kevin McCarthy, permanently classifying these drugs as Schedule I under the Controlled Substances Act would help law enforcement pursue opioid traffickers and manufacturers. Other recommendations in the letter include approving a U.S. Department of Health and Human Services' (HHS) process for removing fentanyl-related substances not found to be widely misused from the Schedule I list and ensuring that courts are able to vacate and reduce sentences involving such drugs. The letter represents a team effort on the part of ONDCP, HHS, and the U.S. Department of Justice in the administration's push for Congress to fund its \$10.7 billion request for substance use treatment.



The U.S. Supreme Court recently faced immense pressure to consider a case related to the legality of establishing safe injection sites where people are able to use illicit drugs in a medically supervised setting. The attorneys general of Delaware, Illinois, Massachusetts, Michigan, Minnesota, New Mexico, Oregon, Rhode Island, Vermont, Virginia, and the District of Columbia contended, in a recently filed brief, that safe consumption facilities are a promising harm-reduction approach that can not only mitigate overdose deaths but also help steer people into treatment. A coalition of 80 current and former prosecutors and law enforcement officials previously filed a brief urging the justices to consider this case, which originates from the City of Philadelphia. Studies have shown that those who use drugs in a supervised injection facility have a reduced risk of dying compared to those who do not frequent these facilities. As of the publication of this newsletter, the Court declined to hear the appeal, leaving in place the ruling against the safe injection site program.



The U.S. Department of Health and Human Services issued new practice guidelines that will now allow certain health care practitioners to prescribe buprenorphine for treating opioid use disorder without the required training certifications. The new guidelines exempt eligible physicians, physician assistants, nurse practitioners, clinical nurse specialists, certified registered nurse anesthetists, and certified nurse midwives, who are state licensed and registered with the Drug Enforcement Administration, from the certification requirements for training, counseling, and other ancillary services, to treat up to 30 patients with buprenorphine.

STATE NEWS BITS

California: Students at the University of Southern California are taking steps to protect drug users on campus by selling fentanyl test strips for one penny through the school's delivery service. The strips are provided by a nonprofit student group called Trojan Awareness Combating Overdose or TACO. The goal is to combat opioid overdose, and the strips come with instructions on how to use them to test for the presence of fentanyl and how to anonymously report a positive result. Since TACO was implemented, not a single overdose by a USC student has been reported.

California: Police are encountering a new form of fentanyl throughout the Bay Area, brightly colored powder that is being heated and then smoked or injected. Authorities say the substance comes in varying colors, signifying differing potencies and is a marked departure from the fentanyl that law enforcement is used to encountering, typically a patch or white powder/pill. There is particular concern that the brightly colored powder will be attractive to children, who may find the powder in their homes, presume it is some sort of candy, and ingest it.

Colorado: The Colorado Naloxone Project recently expanded its pilot program into two labor and delivery units in the hopes of protecting pregnant women and new moms. New mothers are a vulnerable population and those with a substance use disorder are at an increased risk of overdose after they give birth due to post-partum depression and the stress of caring for a newborn. Patients and their families are provided not only with naloxone but also with overdose education and information about the specific risks faced by new moms. The project is funded through grants, and organizers are hoping to expand their efforts to additional patient populations.

District of Columbia: Later this year, D.C. lawmakers will debate legalizing sales of recreational marijuana, and many activists are pushing for a broader legalization of all illicit drugs. A coalition of progressive groups has launched a campaign to decriminalize all drugs and push towards a harm reduction approach that would include supervised sites where people could safely use drugs. The coalition would like to see the City Council remove criminal penalties for personal-use drug possession and also that harm reduction centers provide sterile equipment and connections to support systems for those who need services. D.C. has undertaken similar efforts in the past, but Congress used the budget process to halt those measures.

Florida: Legislation has been filed in the state senate that would close an existing loophole in Florida's driving under the influence (DUI) laws. Under current state law, a driver can be found guilty of DUI if they are in physical control of a vehicle under the influence of alcoholic beverages, chemical substances, or certain controlled substances. The state's definition of controlled substances does not, however, include many prescription and over-the-counter drugs known to impair drivers nor novel psychoactive compounds (*i.e.*, designer drugs) that are sold on the black market and can also impair users. The pending legislation would change that. LAPPA recently published a [fact sheet](#) on drugged driving as well as a [summary of state laws](#) related to drugged driving.

Maryland: The state recently announced a new partnership between the state police and the state department of health that will allow police officers to rapidly test and analyze prescription opioids, heroin, fentanyl, and drug paraphernalia to identify composition and potency. The Rapid Analysis of Drugs (RAD) program uses rapid-result field tests that have a high degree of accuracy, providing valuable information to investigators as they are increasingly encountering substances laced with fentanyl. Analysis of the test results will give law enforcement a better understanding of the current drug market and the ability to work with harm reduction programs to help educate individuals who use drugs to stay safe and avoid accidental overdose.

Michigan: The Southfield Police Department has become the 18th police agency in the state to create a Comeback Quick Response Team, an initiative to help those struggling with substance use disorder. Within 72 hours of a non-fatal overdose where a first responder assisted with the life-threatening event, the team visits the home of the individual who suffered the overdose with the goal of making contact with the person and his or her family. The team, made up of two police officers, a certified peer recovery coach, and a certified family recovery coach, offers support, information, and assistance in obtaining recovery services. To date, the quick response teams have made 1,461 home visits and offered services and support to 890 families across the state.

New York: Two men were arrested with a cache of 50,000 fentanyl pills smuggled over the U.S.–Mexico border in bags seasoned with red pepper chili flakes, which can throw off drug-sniffing dogs. The seized pills were blue and imprinted to resemble oxycodone, but were in fact counterfeit fentanyl pills, a substance to which thousands of overdose deaths in New York City have been attributed. Authorities are still investigating how the pills made it into the U.S. – specifically whether they were personally transported by the suspects or whether package delivery services were used.

New York: Governor Hochul recently signed legislation that focuses on updating the New York Office of Addiction Services and Supports’ guidelines on substance abuse reports, requiring annual reports from state correctional facilities. The required reports will include information such as to which substances incarcerated individuals are addicted and what types of treatment those individuals receive. This information will help the state determine which types of services it needs to provide to individuals when they complete their terms of incarceration.

Oregon: Attorneys from local governments across Oregon have been battling behind the scenes with Governor Kate Brown about funding that the state will receive from the national opioid litigation settlement, of which Oregon’s portion could reach \$330 million. Both sides are blaming one another for an impasse primarily related to determining how much control localities will have in determining how the dollars are spent, keeping in mind that the settlement fund is intended to help states and localities battle addiction and overdose deaths. Oregon is one of more than 40 states that are currently part of the national settlement and of those 40, only about half have reached agreement as to how authority will be split between state and local governments. For more information about the settlement, please refer to the article at the beginning of this newsletter and LAPP’s [Model Opioid Litigation Proceeds Act](#).

Oregon: According to the state’s medical examiner, in 2020, alcohol fatalities rose in Oregon at a rate faster than overdose deaths. The Oregon Liquor Control Commission reported brisk liquor sales, despite widespread closure of bars and restaurants, and while drinking behavior increased across the state, treatment beds and other services for those battling addiction declined due to social distancing restrictions and personnel shortages. The state’s leaders are working with lawmakers to secure new funding to combat the rise in all substance use disorders, including alcohol use disorder. incarceration.

Pennsylvania: The mayor of the city of Scranton is seeking to decriminalize fentanyl test strips within the city limits, hoping to prevent overdose deaths from the potent opioid. As in many areas of the country, Scranton’s recent overdoses involve fentanyl more often than not, yet the strips that can detect the presence of the fentanyl in the drug supply are currently classified as drug paraphernalia under state law and, thus, are illegal to possess. In June of this year, LAPP published a fact sheet that sets forth how fentanyl test strips work as a drug

checking tool, their harm reduction benefits, and the current challenges surrounding their legality. Click [here](#) to read the fact sheet.

Rhode Island: Rhode Island is nearing the start of a pilot program that will give drug users a legal place to use illicit drugs. The pilot would be the first of its kind in the country, and the state hopes to finalize program rules in January and choose sites by March of 2022. Although there was significant opposition, many legislators support the program and say that with overdoses on the rise, the time is right to implement the harm reduction measure. In addition to giving users a safe space and monitoring, safe sites would provide a means for testing drugs for lethal amounts of fentanyl.

Tennessee: A new program called Firefly is helping pregnant women and new moms across the state manage their addiction without having to travel frequently or over long distances. The Firefly program consolidates services under one roof, including peer recovery services, social workers, lactation consultants, obstetric services, pediatricians, psychiatric professionals, and program managers to serve as coordinators. Overdose is a big threat facing Tennessee mothers, and there is a lack of services targeting pregnant and postpartum women with opioid use disorder.

Vermont: The Howards Center for Human Services in Chittenden County is finalizing plans to launch a mobile clinic in 2022 that will increase access to treatment for opioid use disorder to rural residents. The project is being supported with federal grant monies and will bring treatment services to several counties in the state. Plans are for the mobile services to include syringe exchange, access to fentanyl testing strips, and prescriptions for methadone, which are all difficult to access in rural areas.

Virginia: In September of this year, Arlington County began distributing fentanyl test strips to individuals being released from incarceration. In response to an increase in overdose incidents, the County Sheriff's Office created emergency release bags to hand out to inmates suffering from opioid use disorder, including toiletries, a transportation card, a box of the opioid overdose reversal medication, Narcan and now, fentanyl test strips. On average, Arlington is releasing 20 to 25 inmates per month that meet the criteria for opioid use disorder, and having access to the fentanyl test strips could prevent accidental overdose from substances that have been adulterated with fentanyl.

ABOUT LEGISLATIVE ANALYSIS AND PUBLIC POLICY ASSOCIATION

The Legislative Analysis and Public Policy Association (LAPPA) is a 501(c)(3) nonprofit organization whose mission is to conduct legal and legislative research and analysis and draft legislation on effective law and policy in the areas of public safety and health, substance use disorders, and the criminal justice system.

LAPPA produces up-to-the-minute comparative analyses, publications, educational brochures, and other tools ranging from podcasts to model laws and policies that can be used by national, state, and local criminal justice and substance use disorder practitioners who want the latest comprehensive information on law and policy. Examples of topics on which LAPPA has assisted stakeholders include naloxone laws, law enforcement/community engagement, alternatives to incarceration for those with substance use disorders, medication-assisted treatment in correctional settings, and the involuntary commitment and guardianship of individuals with alcohol or substance use disorders.

For more information about LAPPA, please visit: <https://legislativeanalysis.org/>.

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