Legal & Policy Best Practices in Response to the Substance Use Crisis

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Summary

• The Addictions Crisis “Grand Challenge”
• Legal & Policy Best Practices in Response to the Substance Use Crisis
  • Phase 1: March 2018, Preliminary Report (and the subject of this presentation)
  • Phase 2: July 2018, Innovators Workshop
• Medication Assisted Treatment (MAT) Bench Card
The Addictions Crisis “Grand Challenge”

An unprecedented epidemic
Heroin and opioid prescriptions

- Every two and a half hours, someone in Indiana is sent to the hospital for an opioid overdose.
- In Indiana, there are enough bottles of painkillers in circulation for nearly every Hoosier to have their own.
- The number of infants born addicted to opioids is increasing at an alarming rate, costing Indiana more than $64 million in 2014 alone.
- Drug overdose deaths in Indiana cost the state more than $1.4 billion in medical costs and lifetime earnings losses in 2014.
- Indiana is one of four states where the fatal drug overdose rate has quadrupled since 1999. Because of this rise, Hoosiers are now more likely to die from a drug overdose than a car accident.
- If this dire trend continues, the opioid death toll in Indiana could top 15,000 in the next decade — more than the entire population of Brown County.

Direct gross state product loss to Indiana economy = $1.5 billion per year
Source: Ryan M. Brewer, IUPUI
Multiple Crises

- Prescription-drug epidemic
  - Older adults in rural/white communities
- Illegally-produced opioids such as fentanyl
  - Younger adults, increasingly in urban communities of color
- Recent spike in availability and use of cocaine and methamphetamine

IU’s Response to the Addictions Crisis

- A partnership with Governor Eric Holcomb, IU Health, Eskenazi Health, and a growing number of communities and social service agencies.
- IU’s investment: $50 million over 5 years
- Objectives:
  - Reduce the incidence of Substance Use Disorders (SUD)
  - Decrease opioid deaths
  - Decrease the number of babies born with Neonatal Abstinence Syndrome (NAS)
Legal & Policy Best Practices in Response to the Substance Use Crisis
Our Team

- Combined IU McKinney School of Law and Fairbanks School of Public Health Research Team
  - Nicolas Terry (IU McKinney)
  - Ross Silverman (IU McKinney/Fairbanks SPH)
  - Aila Hoss (IU McKinney)
  - Emily Beukema (1L JD)
  - Rebecca Critser (4L JD/MA)
  - Catie Sterling (MHA)

Methodology

- Two-pronged approach:
  - Stakeholder interviews
  - Original research by team
    - Guided by our discrete areas of expertise and insights drawn from stakeholder interviews
  - Build up from significant, typically evidence-based literature
Findings and Recommendations

- Finding: At root the opioid epidemic is part of an addiction problem that stretches back over a century, with each “crisis” tending to recycle “supply-side and criminal-justice approaches” rather than “an expanded public health response.”
  - Recommendation: Harm Reduction
- Finding: These deficiencies frequently are highlighted by pandemics, syndemics, or natural disasters. Crises, of whatever nature, stress the healthcare system, illustrating and exacerbating its weaknesses, such as access, cost, and a lack of care coordination.
  - Recommendation: Healthcare Interventions
- Finding: Stigma and lack of understanding of the substance use disorder can create barriers to advancing and implementing interventions to address the opioid crisis. Additionally, these issues prevent these interventions from being resilient to changes in the political or funding environment.
  - Recommendation: Stigma, Education, Courts, Mainstreaming

Harm Reduction Strategies (1)

- Harm Reduction: public health interventions that seek to minimize illness and injuries associated with drug use
- Examples:
  - Increased naloxone availability
  - Increased access to sterile syringes
  - Drug testing strips
  - Safe consumption sites
- Indiana Implementation:
  - Naloxone access law
  - Syringe exchange programs
Harm Reduction Strategies (2)

• Report Recommendations:
  - Immunity from drug paraphernalia laws should be extended to individuals possessing syringes secured from syringe exchange programs.
  - The legislature should repeal the requirement linking bystander immunity in an overdose situation to the administration of overdose intervention drugs.
  - Immunity from prosecution should be extended to include the individual needing medical assistance, and the scope of the immunity should include protection against violations such as execution of warrants, parole/probation violations, and alcohol-related offenses.
  - Safe station programs should be implemented to better link individuals with SUD to treatment.

Healthcare Interventions (1)

• Policymakers should recognize syringe exchanges and other safe spaces as critical components in the SUD continuum of care and provide resources to better integrate them with treatment and other services.
• Current federal privacy rules create fragmentation of care by hindering its coordination. HHS agencies ONC and SAMHSA should publish a joint guidance designed to better align the HIPAA and “Part 2” privacy regulations.
• Indiana policymakers should explore how to reduce administrative barriers to those eligible for Medicaid services who suffer from OUD and co-morbidities.
Healthcare Interventions (2)

• Wrap-around services should be provided for 6-12 months to individuals with SUD who successfully complete a treatment program.
• Indiana should consider making additional Section 1115 waiver requests to provide care coordination services and other wrap-around services.
• Indiana should fund its own demonstration projects to examine novel approaches to providing coordinated care for the SUD population and evaluate their suitability in the Indiana context such as the use of “hub and spoke” models and “Health Homes.”
• Medicaid services should be reinstated to individuals 30 days prior to their release from correctional facilities to promote improved clinical hand-offs and deployment of wraparound services.
• Improvement are urgently needed to provide evidence-based treatment to Indiana’s jail population.

Building Resilience (1)

• Stigma
  - Structural
    (laws, regs, policies)
  - Public
    (indiv & group attitudes/beliefs)
  - Self-stigma

• Communities
  – Systems, not Silos
Building Resilience (2): Courts & Criminal Justice

Intercept 1 • Law Enforcement

Intercept 2 • First Detention or Court Appearance

Intercept 3 • Jails/Courts

Intercept 4 • Community Reentry

Intercept 5 • Community Corrections, Probation, Parole

Medication Assisted Treatment (MAT) Bench Card: Legal Implications
Prescription Drug Monitoring (INSPECT)

- INSPECT is Indiana’s Prescription Drug Monitoring Program (PDMP); it collects information on the prescribing and dispensing of controlled substances statewide.
- Probation officers and specialty court administrators may apply for access to INSPECT. Prescribers and pharmacists may also have access to INSPECT.
- Uses of PDMP reports is limited to:
  - Completing a presentence investigation, including the conditions of community supervision.
  - Determining eligibility or suitability for a program, service or community supervision condition.
  - Case managing an individual on community supervision if conditions require the individual to abstain from the use of controlled substances or undergo chemical testing.

Americans with Disabilities Act (Title II)

- Protects qualified individuals with disabilities from discrimination on the basis of disability from services, programs, or activities provided by state and local government entities.
- A person with OUD may be a “qualified individual with a disability.” 28 CFR §35.130
- Blanket refusal of MAT could be considered prohibited discrimination and problematic.
- In most cases a public entity may base a decision to withhold services if the individual is engaged in the current and illegal use of drugs.
  - Prescribed MAT treatment is carved out as legal use.
  - The prohibition on discrimination does not preclude reasonable policies or procedures requiring drug testing to ensure adherence.
Privacy and Confidentiality

• The HIPAA Privacy Rule (45 CFR Part 164) and the Substance Use Regulations (42 CFR Part 2) may be implicated for the entities working with individuals who have been diagnosed with or are receiving substance abuse treatment services.

• A Part 2 program may disclose information about a patient to individuals within the criminal justice system who have made participation in the Part 2 program a condition of the disposition of any criminal proceedings against the patient. However, strict rules apply, including patient consent, revocation, and restrictions on re-disclosure. 42 CFR § 2.35

• Part 2, Subpart E (§§2.61-2.67) provides specific rules applying to court orders authorizing the disclosure and use of patient information protected by Part 2.
  • Under Part 2, a treatment provider may disclose confidential information under a court order.
  • However, if the context is a criminal matter, quite specific preconditions and assurances apply. 42 CFR § 2.65

• See generally IC §5-14-3 and Ind. Administrative Rule 9.

Q & A

Download Our Report: https://grandchallenges.iu.edu/addiction/index.html

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