Published on *The National Law Review* https://natlawreview.com

Tracking Anti-Opioid Legislation in Congress

Article By:

Rory Murphy

"Overdose deaths, particularly from prescription drugs and heroin, have reached epidemic levels."
-Chuck Rosenberg, Acting Administrator, Drug Enforcement Administration, October 2015[1]

Opioid abuse in the United States has been a topic of much discussion in recent years, but the problem continues to grow. Since 1999, the number of opioid-related overdose deaths has quadrupled.[2] In a single year from 2014 to 2015, the number of opioid-related overdose deaths increased by over 15 percent. Now, close to two-thirds of all overdose deaths involve some type of opioid.[3] The Health and Human Services Department estimates health and social costs related to prescription opioid abuse to be $55 billion.

The growing epidemic in America is a problem without a short-term solution and will require long-term thinking coupled with substantial resources from, and coordination between, authorities at the federal, state, and local government level.

On August 10, 2017, President Trump announced his intention to declare the epidemic a national emergency, and he will reportedly soon make the official declaration. Congress, on the other hand, has yet to pass meaningful legislation or settle on a coherent strategy, settling only for minor plus ups in the appropriations process. This is despite the introduction of numerous legislative ideas.

As of August 2017, 31 bills had been introduced in Congress that aim to address some aspect of the opioid crisis. These bills fall broadly into one of five categories: (1) increased funding to combat the problem; (2) additional regulations for prescribers of opioids; (3) additional regulations for the sale and manufacture of opioids; (4) adjustments of the criminal aspects related to opioid sales and use; and (5) miscellaneous.

Increase Funding

Much of the proposed legislation involves increasing funding for programs to combat the excessive use of opioids or the creation of grant programs that target different aspects of the opioid epidemic. Many of the bills are proactive, and look to decrease future drug abuse. S. 554 and H.R. 1436 contain provisions for grants that would train health care practitioners in the best practices involving opioid prescriptions, including information about pain management and substance abuse recognition. S. 786 would allocate funding for grants aimed at opioid education in schools. This bill has a special focus on student-athletes, since those students are, in theory, more likely to receive an opioid

prescription due to injury resulting from a game or practice. S. 318 would enhance the grant given to “Cops on the Beat” (a subset of the Omnibus Crime Control and Safe Streets Act of 1968) to encourage the creation of more programs aimed at reducing illegal drug use and manufacturing, with a special focus on opioids.

Another class of bills involving money is more reactive in nature. These bills would dedicate grant money towards the existing consequences of opioid abuse. Some of these bills would help expand access to treatment centers and substance abuse programs, like H.R. 992, which would increase clinical services for opioid abuse and addiction, and H.R. 2038, which would impose a fee on the sale of any active prescription opioid that would then be used for substance abuse treatment efforts.

Other reactive bills focus more on the families affected by opioid and other drug abuse. H.R. 2834 would appropriate funds for the Public Health Service Act to improve the well-being of children and families affected by substance abuse. H.R. 2501 would amend the Social Security Act to give states the option of providing medical assistance to infants with neonatal abstinence syndrome and their families.[4] S. 1268 would amend the Social Security Act to allow foster care maintenance payments for children with parents in licensed, residential, family-based treatment facilities for substance abuse.

H.R. 664 is an example of a bill that is both proactive and reactive. It would appropriate money for programs that expand educational efforts about opioid abuse, addiction, and treatment, and also would make money available to provide first responders with naloxone (an anti-overdose drug).

Regulate Prescribers

Several of the bills would aim to better regulate those prescribing the substance. S. 778, for example, would require prescribers to consult with a prescription drug monitoring program (“PDMP”) before starting patients on certain controlled substances. It would also require prescribers to report when misuse occurs.

Along a similar line, H.R. 993 would require practitioners to screen for potential drug abuse or misuse before prescribing specific classes of opioids and would appropriate funding for grant programs that would develop a process for evaluating dispensing entities. S. 892 would require a certification from all prescribers that patients receiving initial treatment will not be prescribed more than a certain amount of opioids. S. 1049 would amend the Federal Food, Drug, and Cosmetic Act to provide information about drug formulas to health care providers, and H.R. 2063 would amend the Controlled Substance Act (“CSA”) to require the training of all registered opioid providers. H.R. 1854 would require practitioners to consult a PDMP prior to starting treatment with certain opioids. It would also require the Attorney General to facilitate the establishment of an inter-state data-sharing system that would help notify practitioners when patterns of drug misuse are detected.

Regulate Sale and Distribution of Legal Opioids

Some bills focus on the distribution and sale of legal opioids. S. 5230 would impose a fee on the sale of any active opioid, with the profits being designated for substance abuse treatment efforts. S. 1079 would require the FDA to rescind the approval of one opioid for every new opioid that is approved. H.R. 2025 would allow certain applications of drugs to be eligible despite containing labelling information about abuse deterrent properties. S. 1078 would require the Commissioner of the Food and Drug Administration to include medical and scientific information about any drug that he/she approves that the advisory committee rejects. S. 1077 also deals with the FDA, but instead of creating requirements, it would amend the mission statement to specifically include opioid monitoring

as a goal of the organization.

Criminal Actions

One of the challenges in dealing with the opioid epidemic is the accelerated rate new chemical designations are being introduced. H.R. 2851 and H.R. 1781 seek to combat this problem by allowing the Attorney General to issue temporary orders adding new drugs or substances to the list of banned substances under the CSA. Additionally, both bills would penalize the false labeling of opioids. H.R. 1781 would also change the amount of a controlled substance necessary to trigger penalties for possession, certain sentencing guidelines, as well as other aspects of controlled substance monitoring. Another bill, H.R. 1732, would update part of the CSA to include certain "designer drugs."

Other Legislation

A handful of bills don't fit neatly into the categories above. H.R. 2142 and S. 708 aim to "disrupt[] the flow of drugs" by increasing the number of chemical screening devices available to the U.S. Customs and Border protection.[5] These bills are in reaction to the ease of ordering relatively small amounts of prescription opioids off of the internet and the difficulty of identifying them when they are shipped into the United States. [6] H.R. 944 would require the Comptroller General to issue a report about the treatment capacity and needs of the United States as it relates to substance abuse disorders. H.R. 1554 and S. 581 would require the Secretary of Health and Human Services to create standards for "prominently displaying" opioid addiction history on medical records.

Conclusion

What bills will move forward in this Congress remains to be seen, but the sheer number of proposals indicate that Washington has realized the opioid crisis is something that requires federal attention.

Elaine Hillgrove, a Squire Patton Boggs Summer Associate and student at the University of North Carolina School of Law, contributed to this article.

Footnotes

[1] *2015 National Drug Threat Assessment Summary*, U.S. Department of Justice: Drug Enforcement Administration (Oct. 2015), https://www.dea.gov/docs/2015%20NDTA%20Report.pdf.

[2] *Understanding the Epidemic: Drug overdose deaths in the United States continue to increase in 2015*, Centers for Disease Control and Prevention (Dec. 16, 2016), https://www.cdc.gov/drugoverdose/epidemic/index.html.

[3] *Increases in Drug and Opioid-Involved Overdose Deaths – United States, 2010-2015*, Centers for Disease Control and Prevention (Dec. 29, 1016), https://www.cdc.gov/mmwr/volumes/65/wr/mm655051e1.htm.

[4] Neonatal abstinence system is a drug withdrawal syndrome that occurs after birth, primarily in infants exposed to opioids in utero. From 2000-2012, the incidence of NAS has increased 383%, coinciding with the rising opioid epidemic. *Incidence of Neonatal Abstinence Syndrome — 28 States, 1999–2013*, Centers for Disease Control and Prevention (Aug. 12, 2016), https://www.cdc.gov/mmwr/volumes/65/wr/mm6531a2.htm.

[5] *Id*.

[6] *Tsongas, Fitzpatrick introduce bipartisan bill to stem flow of illicit fentanyl into U.S.*, Congresswoman Niki Tsongas (April 25, 2017), https://tsongas.house.gov/press-releases/tsongas-fitzpatrick-introduce-bipartisan-bill-to-stem-flow-of-illicit-fentanyl-into-us/.

National Law Review, Volume VII, Number 298