

The Opioid Crisis and Narcan in Michigan's Public Libraries (webinar)

Clare Membiela, Library Law Specialist at the Library of Michigan, discusses how public libraries can respond to the opioid crisis. Participants may obtain information on how the Michigan Opioid Antagonist laws affect how libraries may obtain and administer drugs like Narcan. This webinar discusses possible policies and strategies to help public libraries comply with current law and still assist patrons in need.

Archive - [view webinar here](#) (you can skip to 1:15)

Q&A

1. Can a County Commissioner purchase the Narcan kits for a public library in the county?

A There are two separate issues here:

A) The County may be able to purchase kits, but should not be able to purchase them in the name of the County or the Library (The County could purchase them in the name of schools, first responders, etc – government entities mentioned within the statutes, or even, possibly for members of the public. Since the statute specifically exempts Government Entities, current dispensing statutes do not include Government Entities among those to whom Pharmacists can dispense the Narcan:

Section (under [MCL 333.17744b](#)), uses the term “person” to indicate the entity that can receive and administer the opioid antagonist or Narcan. Under the definitions of the Public Health Code ([MCL 333.1106\(4\)](#)):

*“(4) "Person" means an individual, partnership, cooperative, association, private corporation, personal representative, receiver, trustee, assignee, or other legal entity. **Person does not include a governmental entity unless specifically provided.**”*

In other words, the legislature has specifically excluded “government entities” from the definition of “person” in the Public Health Code (which includes the applicable statutes on Narcan). The entries permitting use in schools was language specifically added by the legislature.

B) The overall issue here is Liability. The problem is that because Government entities are exempted from the definition of “persons” under [MCL 333.1106\(4\)](#), they are not counted as among those covered by the exemption from liability statutes under [333.17744c](#). In other words, if a library receives Narcan from a County, and a staff member administers it, and something goes wrong and a lawsuit ensues, the staff member administering it is exempted

from liability (because they DO count as a “person” under the statute), but the entity supplying it – IE, the Library and, perhaps the County, as institutions, would likely NOT be exempt from liability.

- a. Certain government entities may, because of sovereign immunity laws, or comprehensive liability insurance be well protected despite the lack of immunity from liability. However, this is an analysis that should be made by the entity in consultation with their attorney in order to determine their risk.

2. Our library (Willard) is not operated by a public school district, but our governing board is appointed entirely by our member school districts. My question was whether their legal immunity extends to the library because of this.

Not likely. A school/public library would have immunity because it is governed by the school board. Yours is a District Library, and even though your board is appointed by the school districts, you are not considered a part of the school district. You are a separate entity.

However, you could check with your insurance company and see what your risk is with regards to Narcan, then consult your attorney to determine your best option.

3. Does this webinar constitute “proper training?”

No. proper training would include a demonstration of how to administer the Narcan, as well as a discussion detailing how to spot a potential overdose. There are many videos on You tube, as well as information on the Michigan Dept of Health page:

[http://www.michigan.gov/documents/mdhhs/Michigan -
Naloxone and How to Respond handout for Web 576321 7.pdf](http://www.michigan.gov/documents/mdhhs/Michigan-_Naloxone_and_How_to_Respond_handout_for_Web_576321_7.pdf)
http://www.michigan.gov/mdhhs/0,5885,7-339-71550_2941_4871_79584---,00.html

4. What do the Narcan kits cost?

Kits in Michigan range between approximately \$40 and \$60. Each Kit contains everything you need to administer – they often even include the accessories needed to provide mouth to mouth resuscitation and/or CPR (which can be required as part of the rescue). Some health insurance plans may offset the cost of the kits.

5. I have a Narcan Kit I obtained to keep on my own – can I bring it to work at the Library?

Yes – Staff, Board members, Friends, and members of the public can obtain, possess and administer Narcan on their own with no worry of liability (as long as the Narcan is administered

in “Good Faith” under [MCL 333.1106\(4\)](#)-ie, you sincerely believe that the person affected is suffering an opioid overdose.). The liability issues occur when the distribution and administration of Narcan becomes part of a library policy or procedure. If an employee brings their own Narcan to work and uses it, there is no likely liability to the library (unless the library, say, began to require that employees obtain Narcan).

6. I feel strongly that my library officially make Narcan available for use by staff and volunteers in order to offer protection to vulnerable members of my community. Is there anything that I can do to initiate a program before this loophole with libraries and “government entities” is closed by the legislature?

Currently, the law is clear with regards to government entities and Narcan – they are simply not included within the current liability exemption – unless the legislature specifically includes them,. However, liability can be very situational. Just because the library may be open to liability doesn't mean that if something should happen the library will definitely be sued – or held to be at fault. What it does mean is that the POTENTIAL is there for a lawsuit. Just as there are factors that increase liability, there are other factors that can mitigate that increase.

For example, if your library has liability insurance, you may want to check with your insurer to see if the library would be covered if there was an issue with Narcan – and if you proceed with a program, will it affect your policy parameters and/or cost?

Have a thorough discussion with your attorney on this topic. What would the true risk be? How likely would a lawsuit be in your area, against your library? What are the factors that must be present for a plaintiff suing to win such a suit against a library? Have there been any such lawsuits?

In the end, libraries considering this issue simply have to work with their attorneys and insurers and (in some cases) their municipalities and determine the risk/benefit calculation that they are comfortable with- the risk of lawsuit vs the benefit to the community and to the people who may be helped. This calculation is one that can only be made by each individual library with their attorneys.

Long term, The Library of Michigan, The Michigan Department of education, and the Michigan Library Association are collaboratively working on proposed legislation to be introduced in the legislature in 2018. Additionally, the Governor has expressed interest in signing legislation that would correct this oversight in the Narcan legislation. Hopefully, by the end of the Summer, this issue will no longer exist.