

# Wisconsin's Naloxone Access Law

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- *For legal advice, individuals should consult with an attorney licensed to practice in Wisconsin.*



Wisconsin first adopted its naloxone access law (NAL) in April 2014 and has since amended the law to further increase access to this life-saving medication (naloxone is sometimes referred to by the brand name Narcan®).<sup>1</sup> This section summarizes key details about Wisconsin's law, including who can possess, deliver, dispense, and administer naloxone, applicable requirements and limitations, and available legal protections.

## Key Provisions of Wisconsin's Naloxone Access Law

- Any person may possess, deliver, dispense, and administer naloxone.
- Education and training requirements apply only when naloxone is prescribed, delivered, or dispensed by a pharmacist, advanced practice nurse, physician, or physician assistant.
- Robust legal protections (civil and criminal immunity) apply to the possession, distribution, and administration of naloxone.

**Q:** I'm not a first responder or medical professional. Can I possess, distribute, and administer naloxone without a prescription or additional training?

**A:** Yes.

- **Any** person may possess naloxone,<sup>2</sup> even without a prescription or special training.
- **Any** person may deliver or dispense naloxone.<sup>3</sup> For most people, no other requirements or conditions apply.
- **Any** person may administer naloxone to another individual who is experiencing – or who the person reasonably believes to be experiencing – an opioid-related drug overdose.<sup>4</sup>

**Q:** What requirements apply to medical professionals?

**A:** Certain health care professionals – advanced practice nurses, pharmacists, physicians, and physician assistants – must take additional steps when prescribing, delivering, or dispensing naloxone.

- An advanced practice nurse, physician, or physician assistant generally must ensure that when they prescribe or deliver naloxone to someone, that person:<sup>i</sup>
  - Has or has the capacity to provide the knowledge and training necessary to safely administer the naloxone to an individual experiencing an opioid-related overdose; and
  - Demonstrates the capacity to ensure that any individual to whom the person further delivers the naloxone has or receives that knowledge and training.<sup>5</sup>
- A pharmacist may deliver or dispense naloxone only in accordance with a patient-specific prescription or standing order issued by an advanced practice nurse, physician, or physician assistant. The pharmacist must provide consultation to the person receiving the naloxone in accordance with rules issued by the Wisconsin Pharmacy Examining Board.<sup>6</sup>
- Other medical professionals such as social workers and peer workers may deliver or dispense naloxone without any additional requirements or conditions.<sup>7</sup>

**Q:** What about first responders and jail facilities?

**A:** Wisconsin's law addresses the possession and use of naloxone by first responders and jail facilities.

- Emergency medical personnel<sup>ii</sup> may administer naloxone in response to an opioid-related overdose. The emergency medical personnel must receive any training required by the Department of Health Services (DHS).<sup>8</sup>
- Ambulance service providers must ensure that emergency medical services practitioners under their supervision and who have received any necessary training have a supply of naloxone available when performing their duties, maintain records of naloxone administration, and submit those records to DHS.<sup>9</sup>
- A law enforcement agency, fire department, or county jail may enter into a written agreement with an ambulance service provider or physician to obtain a supply of naloxone and obtain the training necessary to administer naloxone safely and properly.<sup>10</sup>
- First responders and jail facilities may provide individuals with additional doses of naloxone (commonly referred to as naloxone leave behind). The first responder or jail facility generally does *not* need to provide any training or education to the person receiving the leave-behind naloxone.<sup>iii</sup>

**Q:** Does naloxone require a patient-specific label?

**A:** Wisconsin law generally requires a patient-specific label be attached to dispensed prescription drugs.<sup>11</sup> Wisconsin's naloxone access law does not directly address labeling, creating ambiguities on when and how labeling requirements apply to naloxone. Despite these ambiguities, the overall intent of the state NAL is to reduce regulatory barriers to the widespread availability of naloxone.

- Patient-specific labeling requirements apply only when naloxone is delivered to an ultimate user pursuant to a patient-specific prescription or standing order.<sup>12</sup> Other forms of naloxone distribution – such as bulk delivery to harm reduction programs for subsequent distribution – should not require patient-specific labeling.
- When dispensing naloxone to an ultimate user pursuant to a standing order, a person may consider attaching a pre-printed label that contains the information required by state law and a blank space for the date and recipient's name.<sup>iv</sup> The person can then write the date and recipient's name on the pre-printed label prior to dispensing the naloxone.<sup>v</sup>

**Q:** What legal protections are available?

**A:** Wisconsin's law has strong legal protections for the possession, delivery, dispensing, and administration of naloxone.

- A person<sup>vi</sup> is immune from civil and criminal liability for any resulting outcome if they (1) in good faith deliver or dispense naloxone to another person; or (2) administer naloxone to a person they reasonably believe to be experiencing an opioid-related overdose.<sup>13</sup>
- A pharmacist who in good faith delivers or lawfully dispenses naloxone pursuant to a patient-specific prescription or standing order is immune from civil and criminal liability and may not be subject to professional discipline.<sup>14</sup>
- An advanced practice nurse, physician, or physician assistant is immune from civil and criminal liability and may not be subject to professional discipline if they in good faith prescribe, deliver, or dispense naloxone in accordance with Wisconsin law.<sup>15</sup>
- A law enforcement officer, firefighter, or jail staff who administers naloxone to a person they reasonably believe to be experiencing an opioid-related overdose is immune from civil and criminal liability if they act pursuant to a written agreement with, and training received from, an ambulance service provider or physician.<sup>16</sup>

<b>Summary of Wisconsin's Naloxone Access Law</b>	
<b>Pharmacist</b>	<ul style="list-style-type: none"> <li>• May deliver or dispense naloxone pursuant to a patient-specific prescription or a standing order issued by an advanced practice nurse, physician, or physician assistant.</li> <li>• Must provide a consultation, as required by the Pharmacy Examining Board, to the person to whom the naloxone is delivered or dispensed.</li> <li>• Immune from civil and criminal liability and professional discipline for delivering or dispensing naloxone in good faith pursuant to a patient-specific prescription or standing order.</li> </ul> <p style="text-align: right;"><i>Wis. Stat. § 450.11(1i)(a)</i></p>
<b>Advanced practice nurse, physician, or physician assistant</b>	<ul style="list-style-type: none"> <li>• May prescribe and deliver naloxone to a person in a position to assist an individual at risk of experiencing an opioid-related overdose.                             <ul style="list-style-type: none"> <li>- Must ensure the naloxone recipient (1) has or has the capacity to provide the knowledge and training necessary to safely administer naloxone; and (2) demonstrates the capacity to ensure that any individual to whom the recipient further delivers the naloxone has or receives that knowledge and training.</li> </ul> </li> <li>• May issue a standing order authorizing the dispensing of naloxone.</li> <li>• Immune from civil and criminal liability and professional discipline for prescribing, delivering, or dispensing naloxone in good faith and in accordance with state law.</li> </ul> <p style="text-align: right;"><i>Wis. Stat. §§ 450.11(1i)(b)(2)(b)-(d), 441.18, 448.037</i></p>
<b>Emergency medical responder</b>	<ul style="list-style-type: none"> <li>• May administer naloxone to a person experiencing or believed to be experiencing an opioid-related overdose.</li> <li>• Must receive training on naloxone administration, as specified by the Department of Health Services (DHS).</li> <li>• Must maintain records of naloxone administration and submit the records to DHS.</li> <li>• May distribute naloxone (e.g., naloxone leave-behind programs).</li> </ul> <p style="text-align: right;"><i>Wis. Stat. §§ 256.15(8)(e), 256.40(2)</i></p>
<b>Law enforcement agency, county jail, or fire department</b>	<ul style="list-style-type: none"> <li>• May enter into a written agreement with an ambulance service provider or physician to obtain a supply of naloxone and obtain the training necessary to administer naloxone safely and properly.</li> <li>• May administer naloxone to a person reasonably believed to be experiencing an opioid-related overdose.</li> <li>• Immune from civil and criminal liability for administering naloxone if acting pursuant to a written agreement with and in accordance with training received from an ambulance service provider or physician.</li> </ul> <p style="text-align: right;"><i>Wis. Stat. § 256.40(3)</i></p>
<b>Everyone else</b>	<ul style="list-style-type: none"> <li>• May obtain, possess, dispense, deliver, and administer naloxone.</li> <li>• No mandatory training or education requirements.</li> <li>• Immune from civil and criminal liability for outcomes from distributing or administering naloxone.<sup>vii</sup></li> </ul> <p style="text-align: right;"><i>Wis. Stat. §§ 450.11(1i)(b)(1), (1i)(b)(2)(a), (1i)(c)(2)-(3)</i></p>

## Additional Resources

### Carrying NARCAN® — a Lifesaving Dose of Reality

Wisconsin Department of Health Services | <https://www.dhs.wisconsin.gov/library/p-03093.htm>

### Signs of an Overdose/How to Administer NARCAN®

Wisconsin Department of Health Services | <https://www.dhs.wisconsin.gov/publications/p03094a.pdf>

### Dose of Reality: Resources for Professionals (NARCAN® Direct Program)

Wisconsin Department of Health Services | <https://www.dhs.wisconsin.gov/opioids/professionals.htm>

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## References

- i These requirements do not apply to standing orders issued by an advanced practice nurse, physician, or physician assistant.
  - ii Emergency medical personnel includes certified emergency medical responders and emergency medical services practitioners.
  - iii Additional training or education requirements may apply if required by agency policy or if the person delivering the leave-behind naloxone is an advanced practice nurse, pharmacist, physician, or physician assistant.
  - iv The required information for prescription labels is detailed in Wis. Stat. Ann. § 450.11(4) (a), viewable at <https://docs.legis.wisconsin.gov/statutes/statutes/450/11/4?view=section>.
  - v A person with questions about their specific legal obligations should consult with a licensed attorney.
  - vi More specific immunity provisions apply to pharmacists, advance practice nurses, physicians, and physician assistants who prescribe, deliver, or dispense opioid antagonists. Depending on the circumstances, health care professionals and employees trained in health care may not qualify for immunity when administering an opioid antagonist. Wis. Stat. Ann. § 895.48(1g).
  - vii Depending on the circumstances, health care professionals and employees trained in health care may not qualify for immunity when administering an opioid antagonist. Wis. Stat. Ann. § 895.48(1g).
- 1 See, e.g., 2013 Wis. Assembly Bill 446; 2015 Wisconsin Assembly Bill 427.
  - 2 Wis. Stat. Ann. § 450.11(1)(b)(1).
  - 3 Wis. Stat. Ann. § 450.11(1)(b)(2)(a).
  - 4 Wis. Stat. Ann. § 450.11(1)(c)(3).
  - 5 Wis. Stat. Ann. §§ 450.11(1)(b)(2)(b)-(d), 441.18(2)(b), 448.037(2)(b), 448.9727(2)(b).
  - 6 Wis. Stat. Ann. § 450.11(1)(a)(1).
  - 7 These medical professionals are subject to Wis. Stat. Ann. § 450.11(1)(b)(2)(a), which simply allows “any person [to] deliver or dispense an opioid antagonist.”
  - 8 Wis. Stat. Ann. §§ 256.15(8)(e), 256.40(2)(a)-(b). See also Wis. Admin. Code DHS § 110.526(1) (requiring an EMS practitioner to undergo training regarding the safe and proper administration of opioid antagonists).
  - 9 Wis. Stat. Ann. § 256.40(2)(c).
  - 10 Wis. Stat. Ann. § 256.40(3)(a).
  - 11 Wis. Stat. Ann. § 450.11(4)(a).
  - 12 The labeling requirement applies when a prescribed drug is dispensed. Wis. Stat. Ann. § 450.11(4)(a). Wisconsin state law defines dispense, in part, to mean “to deliver a prescribed drug ... to an ultimate user ... by or pursuant to the prescription order of a practitioner.” Wis. Stat. Ann. § 450.01(7) (emphasis added). Distribution of naloxone that is not to an ultimate user or which is not pursuant to a prescription order does not constitute dispensing.
  - 13 Wis. Stat. Ann. § 450.11(1)(c)(2)-(3).
  - 14 Wis. Stat. Ann. § 450.11(1)(a)(2).
  - 15 Wis. Stat. Ann. §§ 441.18(3), 448.037(3), 448.9727(3).
  - 16 Wis. Stat. Ann. § 256.40(3)(b).