



Kentucky Society of Addiction Medicine

A Chapter of American Society of Addiction Medicine

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February 27, 2024

The Honorable Whitney Westerfield
Chair
Committee on the Judiciary
Kentucky Senate
700 Capital Ave, Annex Room 129
Frankfort, KY 40601

Re: KYSAM Concerns with HB 5, An Act Relating to Crimes and Punishments

Dear Chair Westerfield:

On behalf of the Kentucky Society of Addiction Medicine (KYSAM), the medical specialty society representing physicians and other clinicians who specialize in the treatment of addiction, we write to express our concerns about selected provisions of HB 5, specifically Sections 5-8 of the legislation.

We are concerned that section 5-8 of the proposed legislation may provide unintended consequences for practitioners treating patients with a SUD. Specifically, the language within Section 6 states that a person is guilty of manslaughter in the second degree for “(d) Knowing distribution of fentanyl or a fentanyl derivative to another person without remuneration, and the injection, ingestion, inhalation, or other introduction of the fentanyl or fentanyl derivative causes the death of the person.” KYSAM is concerned that this provision could be used to prosecute physicians and other healthcare practitioners using fentanyl for a legitimate medical purpose under state and federal law. As such, we do not want to create a chilling effect among providers prescribing legitimately. While the section does seemingly carve out language for distributing with ‘remuneration,’ we urge lawmakers to further clarify this exception. **As such, we encourage the bill sponsors to revise this legislation to expressly note that this legislation is not intended to address the use of fentanyl by a medical professional for a legitimate medical purpose by an appropriately licensed practitioner acting in the usual course of their professional practice.”**

Furthermore, our concerns stem from the potential unintended implications that HB 5 could have for access to care for people with a substance use disorder (SUD) if enacted. In a broader sense, we are concerned with the underlying approach of this legislation. While there is no doubt that the addiction and overdose crisis deserve the attention of the Kentucky General Assembly, KYSAM favors an approach that invests in prevention, treatment, and recovery—rather than further criminalization.

Generally, we feel that the language contained in Section 5 through Section 8 of HB 5 is too broad and could be used to punish patients struggling with an opioid use disorder. Specifically, we are concerned that it may impact an individuals’ willingness to call emergency medical services in the event of an overdose, for fear of prosecution under this law. While KYSAM shares the sponsors’ goal of addressing the addiction and overdose crisis, KYSAM wants to ensure that people who use drugs are afforded the opportunity to seek affordable and accessible treatment whenever possible, rather than being subjected to criminalization. Ultimately, KYSAM is concerned that rather than targeting high-level distributors as intended, we fear that this legislation will inadvertently target people who use drugs under a broad interpretation of HB 5.

We encourage lawmakers to invest in expanding access to evidence-based treatment for addiction and strengthening Kentucky’s Good Samaritan law for responding to an overdose. Methadone,

buprenorphine, and naltrexone are three medications approved by the Food and Drug Administration (FDA) to treat addiction. However, despite their clear benefits for persons with SUD,¹ these medications are dramatically under-utilized.² Further, their access is inequitable for specific demographic groups such as Black adults, women, and people living in non-metropolitan areas.³ **As such, we encourage lawmakers interested in addressing addiction and overdose to prioritize enhancing the availability of FDA-approved medications for substance use disorder.** Additionally, Good Samaritan laws are critical to reducing drug overdoses and increasing the number of people in treatment. In fact, research indicates that strong implementation in conjunction with laws that help ensure access to naloxone are correlated with lower rates of overdose deaths.⁴ **We encourage lawmakers to consider strengthening our state's Good Samaritan law to protect individuals from arrest and continue to expand awareness of these laws.** An approach that expands access to evidence-based treatment and expands Good Samaritan protection would provide more public health and societal benefits than criminalization.

Thank you for the opportunity to comment on this legislation. We are eager to work with any lawmakers interested in addressing this crisis and are ready to serve as a resource as needed. Please contact me at tratuy7@gmail.com should you have any questions or concerns.

Sincerely,

Tuyen T. Tran, MD, MBA
Digitally signed by Tuyen T. Tran, MD, MBA
Date: 2024.02.27

Tuyen Tran, MD, MBA, FACP, FASAM
President, Kentucky Society of Addiction Medicine

CC: The Honorable Phillip Wheeler
The Honorable Karen Berg
The Honorable Danny Carroll
The Honorable Matthew Deneen
The Honorable Gerald A. Neal
The Honorable John Schickel
The Honorable Robert Stivers
The Honorable Brandon J. Storm
The Honorable Johnnie Turner

¹ Substance Abuse and Mental Health Services Administration. (2024). *Medications for Substance Use Disorders*. SAMHSA. <https://www.samhsa.gov/medications-substance-use-disorders>

² Jones, C. M., Han, B., Baldwin, G. T., Einstein, E. B., & Compton, W. M. (2023). *Use of Medication for Opioid Use Disorder Among Adults With Past-Year Opioid Use Disorder in the US, 2021*. JAMA Network Open, 6(8). <https://doi.org/10.1001/jamanetworkopen.2023.27488>

³ Ibid.

⁴ Hamilton, L., Davis, C. S., Kravitz-Wirtz, N., Ponicki, W., & Cerdá, M. (2021). *Good Samaritan laws and overdose mortality in the United States in the fentanyl era*. *International Journal of Drug Policy*, 97, 103294. <https://doi.org/10.1016/j.drugpo.2021.103294>