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Overview: Pennsylvania & the National Opioid Epidemic

Introduction

The opioid epidemic is a top public health issue in the United States, with drug overdose deaths ranking as the leading cause of injury death across the country. Between 2010 and 2016, the number of people diagnosed with an opioid addiction escalated by an estimated 493 percent.¹ In 2016, over 64,000 people died in overdoses involving opioids.² Health officials have called the current opioid epidemic the worst drug crisis in American history, surpassing heroin, crack and methamphetamine crises.³ Historically, prescription opioids have not been heavily regulated. However, as the overdose crisis has grown exponentially in the last decade, the federal government has taken steps to regulate opioids and mitigate the epidemic, with many states following suit.

Early Regulation: Late 19th to Early 20th Century

Today's epidemic largely involves addiction to, misuse and diversion of prescription opioids, which are manufactured to produce pain relieving effects similar to opium.⁴ Although illicit opioids produce the same effects, studies indicate that abuse of prescription opioids may lead to illicit drug use.⁵ Historically, the medical and nonmedical use of opioids has not been consistently regulated in the United States. In 1860, Pennsylvania became the first state to pass a law related to opioid use. The law prohibited the sale of morphine, derived from opium, within the state.⁶ Nevada, California, and many other states followed suit, implementing state and local regulations regarding various forms of opium, including heroin, morphine and patented medicines.⁷ These early regulations were largely implemented to discourage recreational drug use. Early federal laws were similarly motivated and were fundamentally designed to prevent importing, manufacturing and/or using smoking opium.⁸

The turn of the 20th century brought an increased concern for public health across the country, the rise of the Progressive Movement, and the passage of the Pure Food and Drug Act of 1906. However, a genuine push for drug regulations had not yet occurred.⁹ This lack of regulation shifted on an international level when the U.S. took steps to ban opium use in the Philippines in 1905.¹⁰ As a result, the U.S. became the front-runner in the international fight against drugs and was invited to the first International Opium Convention in Shanghai. Because there were no federal laws restricting the use of opium in the U.S. at the time, Congress and the President worked to pass the Smoking Opium Exchange Act of 1909 before the conference.¹¹ The subsequent Harrison Act of 1914 heavily regulated drug use through the federal taxing power and put strong restrictions on prescribing to individuals experiencing addiction.¹² The Harrison Act opened the door to current federal regulation of opioids and led to the passage of the federal Anti-Narcotics Act and Pennsylvania's Prescriptions to Addicts Act in 1917.¹³

Declaration of a "War on Drugs": Mid to Late 20th Century

As more regulations were passed, the street price of drugs consequently began to rise, along with the black market and organized crime. The Boggs Act of 1951 was designed to combat the black market by

imposing minimum sentencing, firmly shifting the emphasis of drug policy to criminal liability and increasing the role of law enforcement.¹⁴ This shift led to the passage of the federal Controlled Substances Act in 1970 and a similar law in Pennsylvania in 1972, which aimed to unify all existing federal drug laws and drug policy across the states. These laws also established the drug schedules that are still in use today.¹⁵ In 1971, President Nixon declared drugs to be “public enemy number one,” signifying the launch of the modern “war on drugs.”¹⁶ Subsequently, the Drug Enforcement Agency (DEA) was created in 1973 to consolidate all enforcement efforts to combat illegal drug use.¹⁷

While criminal punishment had become the norm in the now politicized national drug policy issue, the 1974 Narcotic Addict Treatment Act led to relaxed restrictions on prescribing to individuals addicted to drugs, and represented an attempt to increase treatment options.¹⁸ The Act amended the Controlled Substances Act, allowing providers to prescribe narcotics to treat drug addiction. However, very few guidelines were provided for treating chronic pain, which posed issues of legal liability for providers.¹⁹ Despite attempts to shift to addiction prevention and treatment, increasing criminal liability and bolstering law enforcement efforts remained the overwhelming focus of drug policy well into the early 2000s, when prison overcrowding and rising recidivism rates forced the need for change. While there was growing momentum at the federal level to implement preventative education programs and treatment options as alternatives to criminal punishments, attempts to incorporate these alternatives brought increased minimum sentencing requirements, cut backs on the use of parole and capital punishment as an optional sentence for some drug crimes.²⁰ In response, Pennsylvania created the Governor’s Council on Drug and Alcohol Abuse in 1985 to implement preventative education programs and treatment, and rehabilitation alternatives to criminal punishment.²¹

Rise of Prescription Drug Misuse: Late 20th Century to Present

Nearing the 21st century, regulations regarding the use of opioids for chronic pain management were relaxed and the major issue of the U.S. drug epidemic shifted from curbing illicit drug use to reducing misuse of prescription drugs. Efforts to combat this change began in the early 2000s, with both state and federal legislation to regulate prescribing of opioids. The DEA, Centers for Disease Control and Prevention, United States Department of Health and Human Services, and Pennsylvania Department of Health have continued to update prescribing and dispensing guidelines for various specialties in an effort to curb unnecessary opioid prescriptions. Simultaneously, states have rapidly increased implementation of electronic prescription drug monitoring programs (PDMPs), allowing prescribers and dispensers to track patients’ prescription medication history to indicate potential dangers related to treatment determinations. States have also significantly increased engagement in interstate PDMP data sharing in recent years. In 2014, Pennsylvania enacted legislation granting access to its pre-existing electronic PDMP to prescribers and dispensers. The state also amended the PA Controlled Substances Act of 1972 to allow for Drug Overdose Response Immunity and an increased focus on treatment programs.²² The Opioid Abuse Prevention and Treatment Act, introduced into Congress in February of 2017, and the Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities Act, or the SUPPORT for Patients and Communities Act, passed in October 2018,²³ are the latest federal legislative attempts to combat the opioid epidemic and impact the national drug policy.

Conclusion

Understanding the history of state and federal drug policy on opioids may prevent repetition of past policy mistakes and highlight regulatory gaps that require greater attention, knowledge and research. While efforts have been made to create resources to combat the opioid epidemic, their effectiveness relies upon thorough comprehension of their functions and limitations. Further research into key areas of concern, along with a complete understanding of historic policy, allows for more effective legislation and policies moving forward.

¹ Centers for Disease Control and Prevention, “Provisional Drug Overdose Death Counts,” *National Center for Health Statistics: Vital Statistics Rapid Release*, November 13, 2017, accessed December 8, 2017, <https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm>.

² Rose A. Rudd, Puja Seth, Felicitia David, and Lawrence Scholl, “Increases in Drug and Opioid-Involved Overdose Deaths — United States, 2010–2015,” *CDC Morbidity and Mortality Weekly Report*, December 30, 2016, accessed July 6, 2017, https://www.cdc.gov/mmwr/volumes/65/wr/mm655051e1.htm?s_cid=mm655051e1_w.

³ Michael Gonchar and Caroline Crosson Gilpin, “Investigating the Heroin and Prescription Opioid Epidemic: A Lesson Plan,” *The New York Times*, May 4, 2017, accessed July 6, 2017, <https://www.nytimes.com/2017/05/04/learning/lesson-plans/investigating-the-heroin-and-prescription-opioid-epidemic-a-lesson-plan.html>.

⁴ Opium is a natural alkaloid derived from the opium poppy which causes a feeling of euphoria. Opioids are a category of drugs that produce a similar effect to opium, including opiates such as heroin and morphine, which are naturally derived from opium, and semi-synthetic and synthetic prescription drugs that are commonly prescribed to treat pain.

⁵ NIH National Institute on Drug Abuse, “How is Heroin Linked to Prescription Drug Abuse?” *NIH*, November 2014, accessed December 8, 2017, <https://www.drugabuse.gov/publications/research-reports/heroin/how-heroin-linked-to-prescription-drug-abuse>; NIH National Institute on Drug Abuse, “Prescription Opioid Use is a Risk Factor for Heroin Use,” *NIH*, December 2015, accessed December 8, 2017,

<https://www.drugabuse.gov/publications/research-reports/relationship-between-prescription-drug-heroin-abuse/prescription-opioid-use-risk-factor-heroin-use>; Leana Wen, “When a Prescription for Pain Pills Becomes a Gateway to Addiction,” *NPR*, February 15, 2014, accessed December 8, 2017, <https://www.drugabuse.gov/publications/research-reports/relationship-between-prescription-drug-heroin-abuse/prescription-opioid-use-risk-factor-heroin-use>.

⁶ David F. Musto, *The American Disease: Origins of Narcotic Control Third Edition*, (New York and Oxford: Oxford university Press, 1999), 91 (referencing the PA Crimes Act of 1860).

⁷ See King County Bar Association, “Drugs and the Drug Laws: Historical and Cultural Contexts,” (Report of the Legal Farmworkers Group, King County Bar Association, 2005), https://www.kcba.org/druglaw/pdf/report_hc.pdf.

⁸ See Act of February 26, 1887, ch. 210, 24 stat. L. 409, as cited in U.S. Government Printing Office, Congressional Serial Set, (Washington D.C.: U.S. Government Printing Office, 1910), 14-15, available at https://books.google.com/books?id=rh4pAAAAAJ&pg=RA11-PA14&lpg=RA11-PA14&dq=ch.+210,+24+stat.+L.+409&source=bl&ots=SFd9g6pXJ1&sig=MKmRnXddVU5WjYTI8XTctVoSowU&hl=en&sa=X&ved=0ahUKEwi__TvJHVAhUCPz4KHR_FBZsQ6AEIKjAC#v=onepage&q=ch.%20210%2C%2024%20stat.%20L.%20409&f=false.

⁹ *Ibid*; See Pure Food and Drug Act, 59 P.L. 384 (1906).

¹⁰ See Philippine Tariff Revision Act, 33 Stat. L. 944 (1905).

¹¹ King County, “Drugs and the Drug laws.”

¹² See Opium and coca leaves trade restrictions, 38 Stat. 785 (1914), (commonly referred to as the Harrison Act).

¹³ King County, “Drugs and the Drug laws”; see The Pennsylvania Antinarcotics Act, P.L. (1917)

¹⁴ See Narcotic law violations, 65 Stat. 767 (1951) (known as the Boggs Act).

¹⁵ See Comprehensive Drug Abuse Prevention and Control Act, 84 Stat. 1236 (1970); see Controlled Substances, Drugs, Device, and Cosmetic Act, P.L. 233, No. 64 (1972).

¹⁶ King County, “Drugs and the Drug laws,” 29.

¹⁷ *Ibid.*

¹⁸ See Narcotic Addict Treatment Act, 88 Stat. 124 (1974).

¹⁹ Diane E. Hoffmann, "Treating Pain v. Reducing Drug Diversion and Abuse: Recalibrating the Balance in Our Drug Control Laws and Policies," *Saint Louis University Journal of Health Law and Policy*, 1, 231 (2008).

²⁰ Narcotic Addict Treatment Act, 88 Stat. 29-31.

²¹ PA House Bill 1685, Act 119 (1985).

²² See Achieving Better Care by Monitoring all Prescriptions Program (ABC-MAP) Act, P.L. 2911, no. 191 (2014); see Controlled Substance, Drug, Device and Cosmetic Act - Drug Overdose Response Immunity Act, P.L. 2487 no. 139 (2014).

²³ Opioid Abuse Prevention and Treatment Act, H.R.993 (2017) and The Substance Use Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities Act (the "SUPPORT Act"), H.R. 6 (2018).