ADDRESSING SUBSTANCE USE DISORDER IN DELAWARE:
FOURTH ANNUAL UPDATE AND PLAN FOR FUTURE ACTION

Delaware Department of Justice
October 10, 2018

In 2015, 2016, and 2017, the Delaware Department of Justice reviewed the state's status in addressing its opioid epidemic and recommended additional steps that needed to be taken. This document is the fourth such report. The Delaware Department of Justice has taken a vocal role in addressing the opioid crisis not only because of the impact it has on the criminal justice system, but just as importantly, because of the devastating impact it has on Delaware families. Since DOJ's last report in 2017, the state has made some progress in some areas, but significant additional steps need be taken as the human toll of the opioid epidemic increases.

THE MAGNITUDE OF THE CRISIS AND THE STATE'S RESPONSE SINCE 2014

Any doubt as to the scope of Delaware's opioid crisis was eliminated in September when the Delaware Department of Health and Social Services disclosed that a record-setting 39 Delawareans had died from drug overdoses in August. This was not only a record for Delaware, but the death toll was nearly one and one half times the next deadliest month since Delaware began keeping overdose fatality statistics – and the next deadliest month was just last April. These shocking monthly numbers come on the heels of annual fatality statistics suggesting that deaths from drug overdoses in Delaware continue to steadily rise.

Delaware's overdose fatality statistics not only represent hundreds of individual tragedies for our neighbors, and not only suggest that Delaware has yet to comprehensively address this epidemic, but they suggest that Delaware's problem continues to be worse than most other states'. Comparative statistics from the federal government – which lag behind state statistics – showed Delaware with the sixth highest increase in overdose deaths in the country from 2015 to 2016.[1]

Overdose deaths are not the only metric for charting the opioid epidemic. In fact, with the expanded use of naloxone in Delaware, opioid overdose deaths may not even be the most accurate metric. Many overdose deaths have been prevented by the use of naloxone, and Delaware's opioid overdose death statistics would be substantially worse if not for the expanded use of naloxone in Delaware. The United States Department of Health and Human Services and Centers for Disease Control issued a report last March charting the change in opioid overdose rates in 45 states from July, 2016 through September, 2017, using emergency room and hospital billing data. From the third quarter of 2016 to the third quarter of 2017, Delaware's opioid overdose rate as measured

[1] Centers for Disease Control and Prevention, Drug Overdose Death Data, https://www.cdc.gov/drugoverdose/data/statedeaths.html.

through hospital records increased by 105 percent – over three times the average of the 16 states participating in the Enhanced State Opioid Overdose Surveillance program, higher than any of the 16 states other than Wisconsin.[2]

In the face of compelling evidence that the state's opioid epidemic persists, the state has made some progress over the past four years in addressing the epidemic, but has not significantly expanded treatment for Delawareans with substance use disorder.

Delaware has made progress in its effort to reduce the quantity of opioids legally prescribed to patients, and has also made progress in reducing initial legal and insurance barriers to treatment and providing short-term life saving treatments such as naloxone. As detailed below, this progress has come in the form of revised regulations for the prescription of opioids, statutory reforms requiring admission to treatment facilities and providing legal assistance for prematurely terminated insurance coverage, and state funding for first responders' use of naloxone and assistance to emergency room patients in finding immediate treatment.

However, the state continues to spend few new dollars on the expansion of long-term residential treatment or sober living facilities. Since the issuance of DOJ's first report in the fall of 2015, a consistent theme of DOJ's reports has been the need for Delaware to fund more treatment opportunities in these areas for those Delawareans with substance use disorder who are willing to seek treatment.[3] This focus of DOJ was echoed by a report commissioned earlier this year by DHSS from the Johns Hopkins Bloomberg School of Public Health:

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[2] Vital Signs: Trends in Emergency Department Visits for Suspected Opioid Overdoses – United States, July 2016 – September 2017. https://www.cdc.gov/mmwr/volumes/67/wr/mm6709e1.htm.

[3] "We believe that it is critical that the state continue to invest in new treatment beds – with the loss of other treatment beds and a need that still far outstrips available facilities, there is still significant work to do in making appropriate treatment available to those willing to seek it."
--Delaware Department of Justice, August 6, 2015

"…[T]here is broad consensus that the current inventory of treatment opportunities still does not adequately meet the needs of those seeking treatment."
--Delaware Department of Justice, October 19, 2016

"One of the most common complaints that DOJ has received from individuals who have dealt with their own substance abuse problems, and from the families of those who have died from opioid overdoses, is that the state provides insufficient attention to inpatient treatment, and that the nature of Substance Use Disorder requires an inpatient setting far more often and for longer duration than is currently available in Delaware."
--Delaware Department of Justice, September 6, 2017

> "Long-term recovery is aided by a stable living environment and access to a broad range of services. Stakeholders mentioned the inadequate supply of housing options and employment instability as barriers to successful engagement in long-term treatment. There is a currently a limited continuum of recovery housing in Delaware, especially more intensive, supervised housing for individuals in early stages of recovery. Ensuring that these housing options are available should be a high priority. "[4]

The state's inventory of slots in residential treatment or less intensive "sober living" housing facilities has increased only by small numbers over the past several years. Thus, this fourth DOJ annual report – like the first report three years ago – emphasizes the need for Delaware to make longer-term residential treatment and sober living slots available to Delawareans who need them.

DOJ is also hopeful that two other state initiatives will yield positive results in the coming year. First, the state has announced that it intends to pay two contractors to operate a series of "START Centers" that will provide initial medication assisted treatment to patients.[5] It appears that these START Centers will operate from existing physical facilities, and will involve an expanded range of medication assisted treatment services at those existing facilities.[6] Although not a substitute for more supervised treatment for patients who require something more than the prescription of medication, the existence of such centers in Delaware will be an improvement over the status quo.[7]

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[4] "A Blueprint for Transforming Opioid Use Disorder Treatment in Delaware," Johns Hopkins Bloomberg School of Public Health, July 2018. https://dhss.delaware.gov/dhss/files/johnshopkinsrep.pdf

[5] "DHSS Launches START Initiative to Engage More Delawareans Suffering From Substance Use Disorder In Treatment and Wraparound Social Services," DHSS Press Release, October 3, 2018 (https://news.delaware.gov/2018/10/03/start-initiative-to-engage-more-delawareans-suffering-from-substance-use-disorder-in-treatment/).

[6] "Delaware Opts to Expand Use of Addiction Mentors Rather Than Treatment Capacity," Delaware Public Media, October 3, 2018 (http://www.delawarepublic.org/post/delaware-opts-expand-use-addiction-mentors-rather-treatment-capacity)

[7] Other states such as Vermont and Rhode Island have implemented plans that include the equivalent of "START Centers" but also include aggressive efforts to recruit and train a wider number of primary care physicians who wish to take on additional patients seeking treatment for substance use disorder, and provide those physicians with adequate support personnel so that they are not simply dispensing medication. In Vermont, for example, the system provides such physicians with a full time equivalent registered nurse and a masters level licensed behavioral health provider for each 100 Medicaid patients. "Vermont Hub and Spoke Model of Care for Opioid Use Disorder: Development,

The General Assembly also set aside $3 million of one-time funds in the current fiscal year budget that the Office of Management and Budget is authorized to spend on implementing programs recommended by the Behavioral Health Consortium.[8] To date, the Office of Management and Budget has not announced how it will spend these funds. DOJ is hopeful that the maximum amount of those funds possible will be spent to increase the availability of sober living and long-term residential treatment in Delaware, both needs that have been acknowledged by the Behavioral Health Consortium.[9]

PROGRESS SINCE 2014

Reducing Prescription of Opioids

Reducing the unnecessary prescription and use of opioid drugs was a focus of the Department of Justice's first report in 2015. The evidence then, reaffirmed consistently in intervening years, was that (a) there was a direct correlation between the expanded prescription of opioid drugs and addiction to both legal and illegal opioids, and (b) that a substantial percentage of persons who reported addictions to legal and illegal opioids were first introduced to opioids through legal prescriptions. Delaware also had at that time extraordinarily high per-capita levels of opioid prescriptions, especially with respect to high-dosage opioids. The policy decision was clear, if not popular among prescribers: reduce the unnecessary prescription of opioids by requiring prescribers to be more careful and selective about prescribing opioids, and require prescribers to more carefully monitor the use of opioids by patients who were taking them for extended periods of time.

The Department of State, under the leadership of Secretary of State Jeff Bullock, adopted and in some cases enhanced DOJ's recommendations with respect to regulations governing the prescription of opioids. Significantly, none of the regulations prohibited the prescription of opioids if such prescriptions were ultimately deemed necessary by the prescriber. Instead, the regulations required that prescribers specifically document the need for opioids that were prescribed for youth or for adults for a duration longer than seven days, and required follow-up monitoring by prescribers who prescribed opioids for extended periods of time. Exceptions were made for some patients, such as those receiving palliative care.

Implementation, and Impact," Journal of Addiction Medicine, July-August, 2017 (https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5537005/#R37). It is our understanding that the Delaware START program may eventually evolve to include some efforts with primary care physicians as well.

[8] Senate Bill 236, 149th General Assembly

[9] Behavioral Health Consortium Three Year Action Plan (https://governor.delaware.gov/wp-content/uploads/sites/24/2018/05/delaware_bhc_threeyearactionplan_2018.pdf) at p. 14 ("Increase the capacity of the substance use disorder treatment system along the full continuum of care to meet the needs of Delawareans, including residential beds, recovery residences, and outpatient services to ensure high-quality, individualized care.")

The new regulations went into effect in the spring of 2017 after time for education and training of prescribers, and initial results suggest that they have resulted in an overall reduction in the prescription of opioids. The total volume of opioids prescribed to Delawareans in the first quarter of 2018 was 18 percent lower than the quantity prescribed in the first quarter of 2017.[10] This extremely positive development correlates in time to the implementation of the state's new regulations.

Expanding Law Enforcement and Prosecution Efforts

With extraordinary assistance from local, state, and federal law enforcement agencies, DOJ has dramatically increased its focus on the planning, execution, and prosecution of law enforcement operations against substantial drug rings and the entire network of individuals responsible for running them. Several of these prosecutions have involved court-approved wiretaps and other sophisticated surveillance techniques. The result of these efforts has been a number of convictions, guilty pleas, and substantial prison sentences for high-level drug dealers, and the seizure of a significant quantity of drugs (including large amounts of fentanyl). Some of the state's major drug dealers have recently received prison sentences in excess of 20 years. DOJ will continue to work with its partner agencies to disrupt drug trafficking operations and prosecute individuals all the way up the supply chain who are responsible for those operations.

Improving Use of the Prescription Monitoring Program

In 2016, the Department of Justice recommended that the General Assembly establish a process that would allow the state's Prescription Monitoring Program to be used more efficiently to identify prescribers whose patterns of prescribing opioids might need to be the subject of licensing or, in extraordinary cases, criminal actions. The General Assembly enacted this legislation in 2017, and pursuant to the terms of the legislation, the newly created PMP Advisory Committee has established formal guidelines for the Division of Professional Regulation to use in identifying prescribers, some of those prescribers have in fact been identified, and their practices are currently being examined by the Department of Justice and the Division of Professional Regulation working with a nationally recognized medical expert to determine if licensing or other action is warranted.

The Department of Justice also recommended in 2016 that the Prescription Monitoring Program notify prescribers of overdoses by their patients. DOJ stated "The

[10] "One Year After New Regulations Issued, Delaware Opioid Prescriptions and Quantities Dispensed Continue to Drop," Delaware Department of State Press Release, April 19, 2018 (https://news.delaware.gov/2018/04/19/delaware-opioid-prescriptions-quantities-dispensed-continue-drop/)

second [area for improved use of the PMP] relates to prompt notification of opioid prescribers and suboxone prescribers when an individual either overdoses or is diagnosed in another setting with substance use disorder. Currently, it is possible for an individual to overdose or be diagnosed with an addiction and have the medical professional who prescribes him his opioid drugs continue to prescribe them, because the prescriber is not automatically made aware of the overdose or diagnosis." With the leadership of the Division of Public Health, the state took its first step toward addressing this problem during this past calendar year, with the passage in the General Assembly of Senate Bill 206, which allows protected health information (such as medical records relating to overdoses) to be disclosed to the Prescription Monitoring Program so that prescribers can be aware of past overdose incidents when prescribing new opioids.

Conducting Individualized Reviews of Overdose Deaths

In 2015, DOJ recommended that the state create a statutory process for review of deaths caused by opioid overdoses, in order to provide the state with a more fact-based set of data and facts from which to derive strategies to best combat the opioid epidemic. The General Assembly enacted legislation in 2016 creating such a body to review such overdose deaths. Because no funding was provided in connection with the creation of the Drug Overdose Fatality Commission, DOJ diverted staffing resources from its own ranks to provide staff to the Commission. Additional changes to the Delaware Code had to be made in 2017 to allow the Commission to collect all of the medical records it needed to perform its duties. With necessary changes made in the law, the Commission's regional review teams have begun to review cases and the Commission intends to offer formal recommendations to the General Assembly in time for action during the coming legislative session. The Drug Overdose Fatality Commission is an extremely ambitious project that has encountered a number of legal, fiscal, and logistical challenges to beginning its work, but DOJ is optimistic that it will be able to offer practical, evidence-based suggestions to the state now that it has begun to review cases.

Expanding Use of Naloxone by Law Enforcement Officers

At the time of DOJ's 2015 report, very few Delaware police departments allowed their officers to carry naloxone. The Delaware law allowing police officers to carry and administer naloxone had only been passed in 2014, and in the fall of 2015 only three police departments had officers trained and carrying the medication. In its 2015 report, DOJ targeted expanded use of naloxone by police departments as a primary goal. One important milestone in this effort was DOJ's 2016 initiative to use funds from the State Law Enforcement Assistance Fund to provide initial funding to police departments to purchase naloxone. The provision of these start-up funds increased the number of Delaware police departments using naloxone from six to twenty-three.

In 2017, DOJ recommended in its annual report that the state make funds available to local police departments for naloxone purchases as part of the state's annual operating fund budget, so that support for this critical initiative – which requires that the medication be replaced as its shelf life expires – would not depend on year-to-year one

time grants. DOJ was gratified that Governor Carney included $100,000 for purchase of naloxone by local law enforcement agencies in his proposed operating budget submitted in January 2018, and that the General Assembly included this appropriation in the budget that was passed and signed by the Governor on July 1, 2018. Combined with federal funds the state is receiving that are also targeted at naloxone purchases, this money should be sufficient to purchase naloxone for those police agencies that wish to purchase it, in addition to other first responders who wish to purchase it.

It is always important in charting the state's improvement in the distribution of naloxone to note the pivotal role of the advocacy group atTAcK Addiction in this effort. Members of atTAcK Addiction introduced the idea of wider use of naloxone to the state, successfully advocated for a number of statutes expanding its permissible uses, and directly lobbied initially hesitant police departments to equip their officers with the drug. Many lives have been saved because of atTAcK Addiction's focus on this issue.

Ensuring Adequate Insurance Coverage of Substance Use Disorder Treatment

In 2016, the Department of Justice recommended two new laws to the Delaware General Assembly: one to remove insurance obstacles to initial substance use disorder treatment for those seeking it, and one creating a new process through DOJ to provide legal and medical assistance to those whose substance use disorder treatment benefits were being terminated before treatment was complete. Both proposed laws were based on the fact that the overwhelming majority of Delawareans have either private or public insurance coverage and are eligible to receive substance use disorder treatment through that insurance, but too many Delawareans either faced insurance barriers to entering treatment or were forced by their insurance carriers to exit treatment before it was medically appropriate for them to do so.

Both bills passed. Delaware now has one of the strictest laws in the country with respect to what initial insurance coverages must be provided to Delawareans seeking treatment for substance use disorder, in order to ensure that no Delawareans are turned away at the critical moment when they are willing to seek treatment. Initial reports from facilities that offer substance use disorder treatment is that the new statute has been successful in reducing the number of Delawareans who must be turned away from initial treatment. Delaware also now has the only statewide program in the country that offers free legal assistance to those whose substance use disorder treatment has been improperly terminated. To date, the program has not received widespread usage from Delawareans, and DOJ will be seeking to better publicize this valuable program so that more Delawareans can take advantage of it.

Litigation Against Certain Manufacturers, Distributors, and Retail Sellers of Opioids

Since the issuance of DOJ's 2017 report, DOJ filed litigation in Delaware Superior Court against certain manufacturers, distributors, and retail sellers of opioids, alleging that the defendants' unlawful acts had contributed to the opioid epidemic and

seeking to have the defendants pay the costs of wrestling with that epidemic. This litigation, which had been planned for some time by DOJ, survived a motion by the defendants to remove it to a federal court in Ohio, and initial defense motions seeking to dismiss the case will be heard later this calendar year. DOJ is confident that the lawsuit will survive these motions, and ultimately compel the defendants to share the heavy cost borne by the state of this epidemic.

Funding of Support Services to Ensure Coordination Between Actors in the Substance Abuse Treatment Community

Although Delaware's options for treatment of substance use disorder are limited, they are still underutilized by patients who are seen in the state's medical facilities for overdoses and other medical conditions. Christiana Care's Project Engage and other similar programs have demonstrated that appropriate intervention with individuals in a medical setting can help transition those individuals into a treatment program. In 2017, DOJ recommended that the state dedicate $675,000 (an amount determined by a Treatment Needs Assessment it commissioned) to establish a central navigational system for persons identified with substance use disorder to ensure a "warm hand-off" of patients and development of local multi-disciplinary teams of providers. The Governor recommended, and the General Assembly approved, $990,000 in new general fund dollars in the current year's budget for an "overdose system of care." Earlier this month, DHSS detailed its plans to "us[e] certified recovery peers connected to emergency departments, primary care, urgent care, EMS, police officers and families as the gateway. The peers will assist individuals suffering from substance use disorder as they navigate their way through both the treatment and social services systems, helping meet their needs for housing, transportation, employment, social services, legal or financial counseling, and other behavioral health or medical care."[11] The funding of these peer counselors is a very positive development and the Governor and General Assembly should be commended for recognizing and acting on this need.

Use of Injectable Naltrexone to Reduce Risk of Overdose By Inmates Being Released From Correctional Facilities

In its 2017 report, DOJ encouraged the Department of Correction to explore the expanded use of injectable naltrexone when releasing inmates with histories of substance use disorder back into the community. Naltrexone is an opioid antagonist that blocks the effects of opioids. Injectable naltrexone needs only to be administered once a month, and is not itself an opioid, both qualities that make it a particularly plausible option for correctional facilities seeking to treat inmates preparing to be released from prison. Although injectable naltrexone is not the appropriate drug for every individual and

[11] "DHSS Launches START Initiative to Engage More Delawareans Suffering From Substance Use Disorder In Treatment and Wraparound Social Services," DHSS Press Release, October 3, 2018 (https://news.delaware.gov/2018/10/03/start-initiative-to-engage-more-delawareans-suffering-from-substance-use-disorder-in-treatment/).

medication assisted treatment should be prescribed in an individualized manner, recent research by the National Institute for Drug Abuse has indicated that once the initial barrier to using injectable naltrexone is overcome – the need for the patient to be weaned off opioids before starting the medication – it is as effective as other medication assisted treatments.[12] The Department of Correction is planning to expand its injectable naltrexone program, to offer the medication to all inmates with a history of substance use disorder who are re-entering the community (as opposed to the current program which offers the drug only to those inmates who have undergone a specific prison drug treatment program). The new Department of Correction initiative will also seek to administer the medication to inmates for a period of six months after their release, using Medicaid funds to support the effort. This expanded use of injectable naltrexone with inmates who were previously released with no treatment or protection against relapse is a welcome development.

UNFINISHED BUSINESS IN DELAWARE'S FIGHT AGAINST THE OPIOID EPIDEMIC, AND RECOMMENDATIONS TO ADDRESS CURRENT DEFICIENCIES.

Intensive Inpatient Treatment and Housing. Delaware's effort to combat the opioid epidemic over the last four years has not included substantial increases in the number of slots available for long term residential drug treatment, sober living, or treatment directed at adolescents. The state has added no long-term residential treatment slots in the last four years, and funded fewer than 30 sober living slots over the same period of time. There remain just over 200 treatment beds (none of them for long term residential treatment) to help over 11,000 Delawareans believed to be struggling with substance use disorder. Delaware also has no programs targeted specifically at high school age students with substance use disorder.

Some have said that long-term residential treatment and sober living facilities are less beneficial to those with substance use disorder than "medication assisted treatment" ("MAT") through the prescription of buprenorphine and other medications. But these options are not mutually exclusive and both are needed. Not only do a variety of sober living and long-term residential facility providers allow residents to receive medication assisted treatment, but such facilities can be ideal living situations for some individuals receiving MAT. The 11,000 Delawareans with substance use disorder are a diverse group, whose needs cannot be met by a single, myopic approach to treatment. Some Delawareans may be able to overcome an addiction solely by taking medication such as buprenorphine; many will likely need a higher level of supervision; some will need a stable, controlled living environment for an extended period of time; and some may not be willing to take medication at all as part of their treatment. Even those states

[12] "Long-awaited Study Finds Monthly Vivitrol as Effective As Daily Pill For Opioid Addiction," statnews.com, November 14, 2017, (https://www.statnews.com/2017/11/14/vivitrol-suboxone-study-nida/)

recognized as the country's most advanced practitioners of medication assisted treatment have recognized the importance of residential treatment to complement MAT.

The specific treatment needs that DOJ has identified are:

1. ***Expansion of sober living facilities in Delaware***. Sober living facilities – which in many cases welcome individuals undergoing medication assisted treatment – are an economically efficient way for the state to provide stable, supervised living environments for individuals who do not need the level of care associated with an inpatient residential treatment facility. The sober living model offers the continuum of care that will put the resident in a position to have success in obtaining long term recovery. There are two independent barriers to the expansion of sober living facilities in Delaware. One is that the total sum of money available for reimbursement of sober living facilities is inadequate. The second is that the reimbursement rate for sober living facilities is inadequate, deterring some established sober living entities from claiming those funds that are available. DOJ had previously recommended that the state earmark $4 million in economic development funds to incentivize private entities to create new inpatient or sober living facilities in Delaware. That recommendation was not adopted by the state. The state did include funds for 20 new sober living slots in its general fund budget last year, but it is not known at this time whether any entity will take advantage of those funds, given the issues with reimbursement rates and start-up costs for new facilities.

2. ***Expansion of inpatient residential drug treatment in Delaware.*** There are fewer than twenty slots in the state of Delaware available to individuals seeking inpatient drug treatment for a period of longer than 30 days. Although some academics argue that long-term residential treatment is not the most cost-effective or best way to address substance use disorder, the absence of long-term residential treatment is overwhelmingly the top complaint that DOJ hears from front-line treatment professionals, individuals seeking to address their own drug addictions, and families of those seeking treatment. As noted above, the General Assembly did not adopt DOJ's recommendation that $ 4 million in economic development funds be earmarked to incentivize the creation of long-term residential treatment and sober living slots.

3. ***Recovery High School Program.*** Around the country, an increasing number of "recovery high schools" have been opening – high schools designed specifically for students in recovery from substance use disorder. A national association of such schools now exists, including The Bridge Way School located outside of Philadelphia.[13] The Red Clay School District has offered to make a building available for the operation of a recovery high school program in Delaware. Based on the operating expenses of the Bridge Way School, the operating cost of a recovery high school program in Delaware would be

[13] The Association of Recovery Schools web site is located at https://recoveryschools.org.

approximately $500,000/year for a student body of 25 students. This is an amount consistent with what the state spends for the educational needs of many students with complex medical challenges. DOJ proposed earlier this year that the state fund the creation of a recovery high school program, but the recommendation was not accepted by the General Assembly.

4. ***Involuntary Treatment for Persons At Risk of Self-Harm.*** In its 2017 report, DOJ noted that front-line law enforcement personnel and advocates had shared with DOJ that they perceived a need to allow for involuntary treatment of some persons with substance use disorder for whom other efforts at treatment had been unsuccessful. DOJ committed to assisting the state with any legal steps that needed to be taken to make involuntary treatment possible. DOJ has reviewed the state's existing involuntary treatment statute[14], and has concluded that the statute is sufficient as written to allow for involuntary treatment of "persons in need of treatment." However, there are very few inpatient treatment beds in Delaware that would be appropriate facilities for persons present against their will. Involuntary treatment in other states has had very limited success, due in large part to similar shortages of secure inpatient treatment facilities. If Delaware is to have a meaningful involuntary treatment program, it will need to first expand the state's inventory of secure inpatient residential treatment programs.

DOJ strongly recommends that the state incorporate into its general fund budget money for heightened reimbursement of sober living slots, a substantial increase in the number of sober living and inpatient residential treatment slots available to Delawareans, and the funding of a recovery high school for 25 students with substance use disorder.

Prevention/Alternatives to Opioids. Last year, DOJ recommended that the state implement a program to reduce the barriers to doctors prescribing and patients using proven alternatives to opioids for pain management. Subsequent to that recommendation, the state's Addiction Action Committee made a detailed proposal to the General Assembly for implementing such a plan, which included the elimination of private and public insurance barriers for physical therapy and chiropractic treatment, and a pilot state program to determine the short-term cost for the elimination of barriers to other treatments such as massage, acupuncture, and yoga.

Legislation implementing the Addiction Action Committee's proposal was introduced in the Delaware State Senate.[15] However, before the bill was passed by the legislature, it was amended to eliminate most of the expanded treatments: annual treatment caps were lifted for physical therapy and chiropractic treatment only for those persons with traditional private health insurance exempt from federal regulation (approximately 20% of Delawareans with health insurance). Existing physical therapy and chiropractic therapy caps remain in place for public employees and Medicaid

[14] 16 Del.C. § 2213
[15] Senate Bill 225, 149th General Assembly.

recipients. And the pilot program recommended by the Addiction Action Committee was eliminated altogether.

Additionally, the Addiction Action Committee discussed but did not recommend that state law be changed to require that prescribers describe the risks of opioids and alternatives to opioids to patients on the day that they prescribe them for outpatient pharmacies, rather than waiting until prescriptions are refilled. A number of states have now mandated that such information be provided to some patients immediately upon the prescription of opioids and that the patient's informed consent be obtained on forms generated by the state.[16]

DOJ recommends that the General Assembly pass Senate Bill 225 as it was originally written, in order to provide Delawareans with alternative pain treatments in place of opioids. DOJ also recommends that Delaware follow the lead of an increasing number of states and mandate that patients receiving outpatient prescriptions of opioids (a) receive information about the risks of opioids and alternatives to opioids at the time of the first prescription, and (b) sign an informed consent form acknowledging that they have received this information.

3. ***Opioid Impact Fee.*** DOJ supported and assisted legislators with an effort to pass legislation creating an opioid impact fee in Delaware, to be imposed on the manufacturers of opioid drugs in order to help remedy the harm those drugs have caused in Delaware. The proposal[17], adopted by legislators from a suggestion originally made by the advocacy group atTAcK Addiction, was tabled in the Delaware State Senate amid organized opposition from the pharmaceutical industry.

DOJ recommends that the General Assembly enact legislation creating an opioid impact fee in the upcoming General Assembly. DOJ believes a statute can be enacted that will survive legal challenge and that will not materially impact the cost of prescription drugs in Delaware.

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[16] See, e.g., House Bill 448, Michigan General Assembly 99th Session (https://www.legislature.mi.gov/documents/2017-2018/publicact/pdf/2017-PA-0246.pdf); Vermont Rules Governing the Prescribing of Opioids for Pain (http://www.healthvermont.gov/sites/default/files/documents/pdf/REG_opioids-prescribing-for-pain.pdf); Tennessee Code 63-1-164 (implied consent required for all opioid prescriptions over three days unless prescribed by specially licensed pain management doctor).

[17] Senate Substitute 1 for Senate Bill 176, 149th General Assembly.