

Legal Preparedness to Address the Opioid Crisis in Indian Country

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2019 Northwest Tribal Public Health Emergency Preparedness Conference

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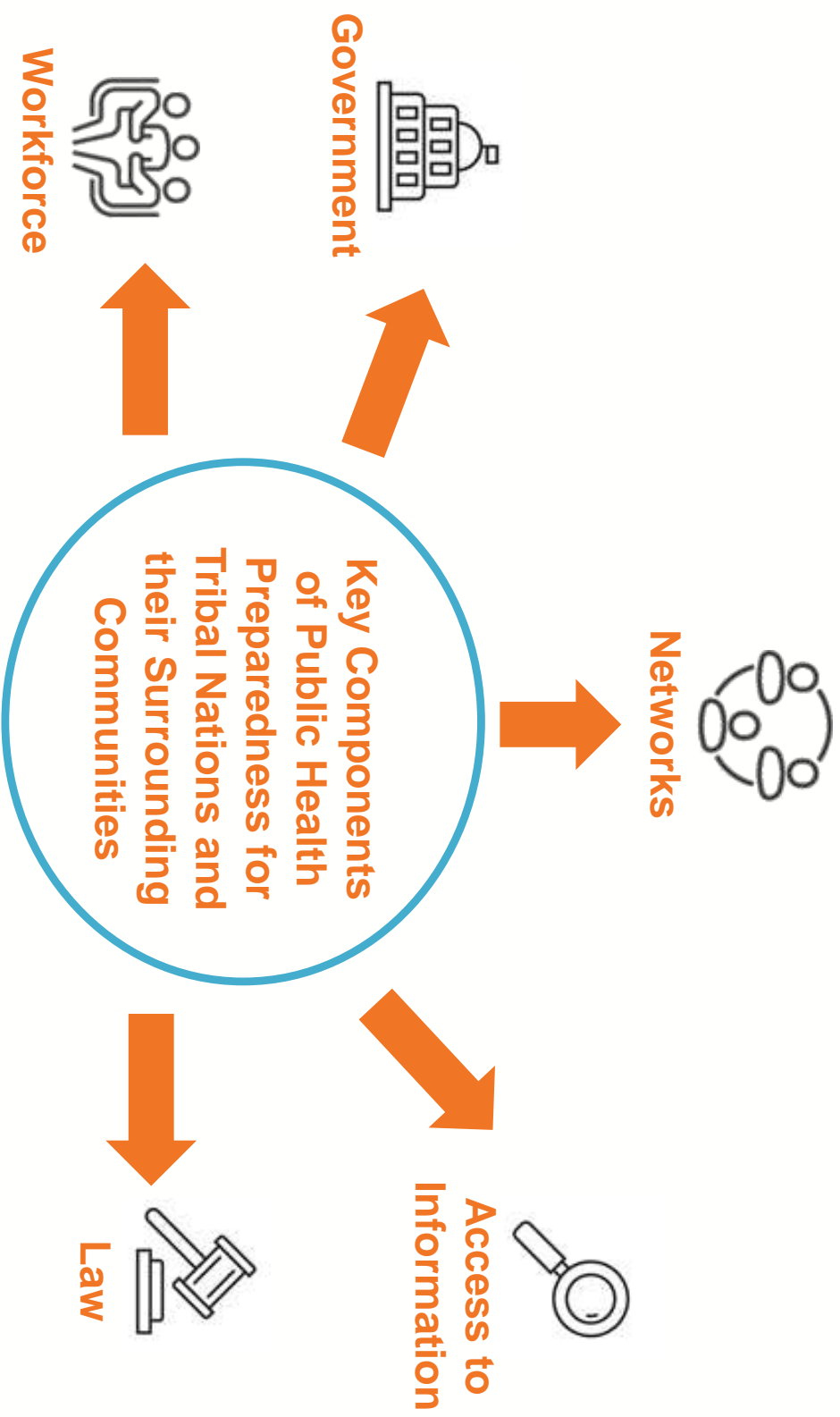
Learning Objectives

- ✓ Explain legal preparedness for Tribal Nations
- ✓ Describe the complex nature of the opioid overdose epidemic across Indian Country
- ✓ Discuss how to use legal actions to respond to the opioid crisis

Roadmap

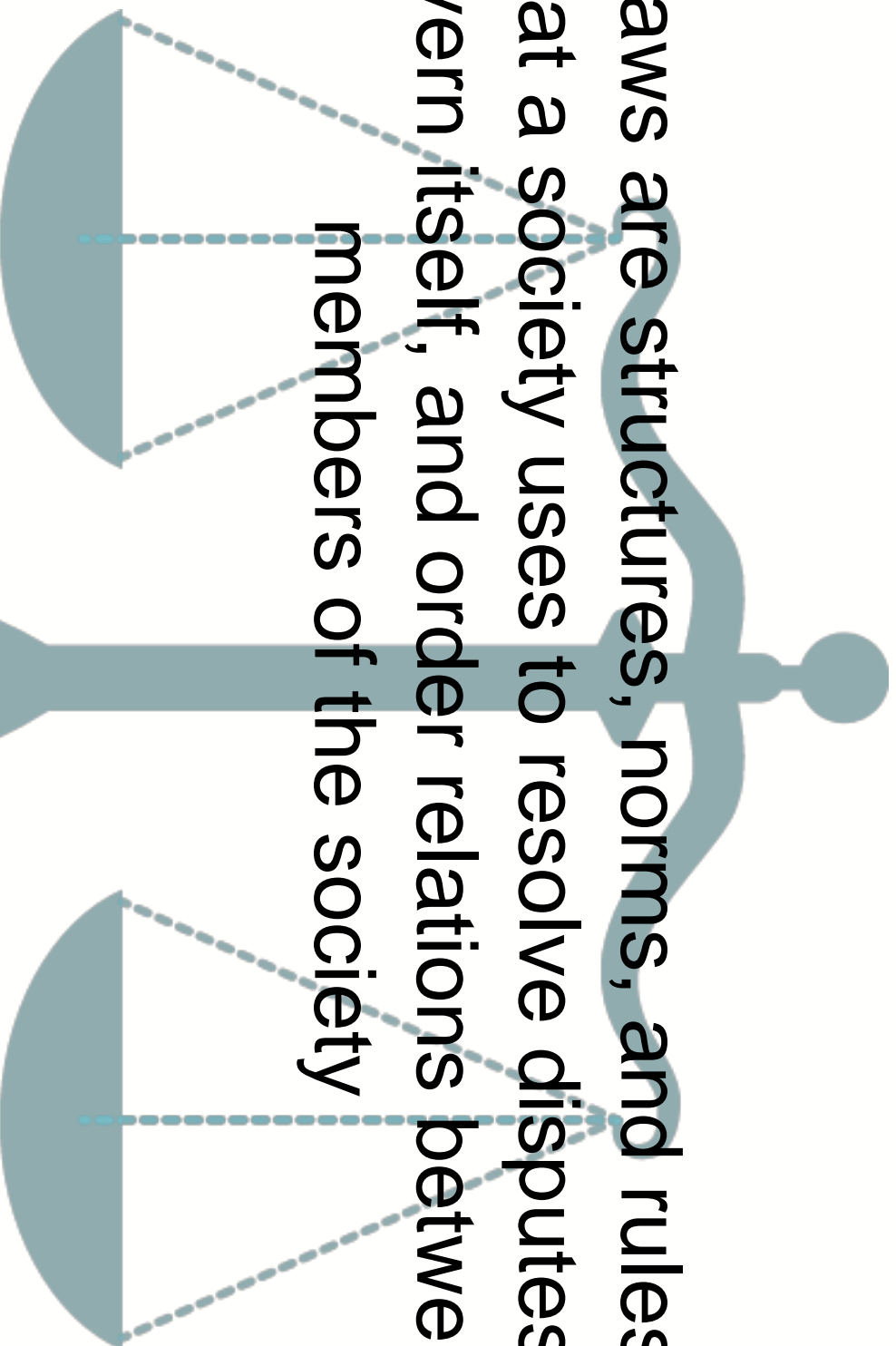
- Public health legal preparedness overview
- Tribal legal preparedness and the opioid crisis in Indian Country
- Select legal actions to address the opioid crisis
 - Federal
 - Tribal
 - State
- Conclusion

Public Health Preparedness

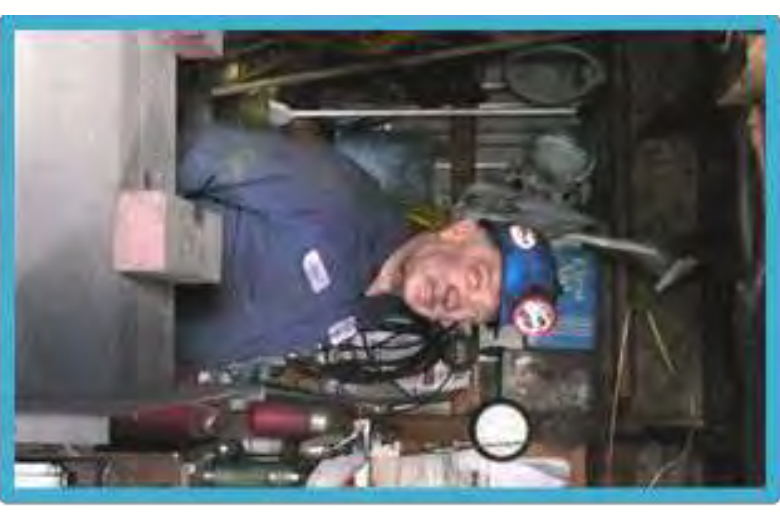


Public Health Law

Laws are structures, norms, and rules that a society uses to resolve disputes, govern itself, and order relations between members of the society

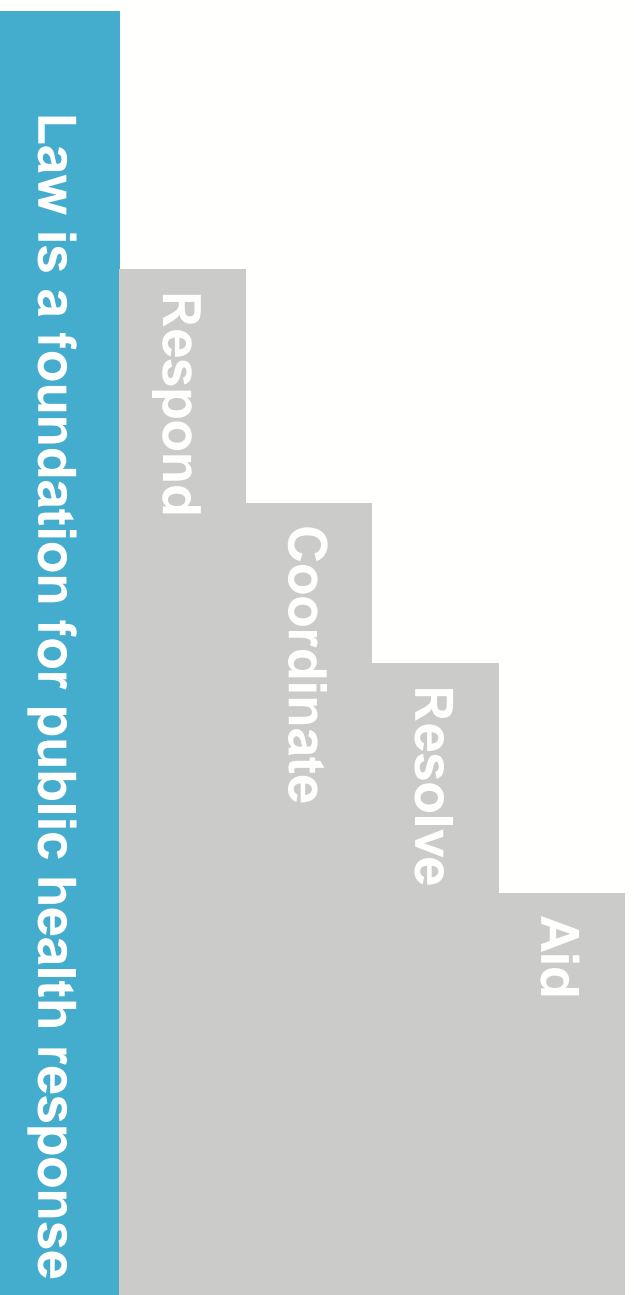


Public Health Law

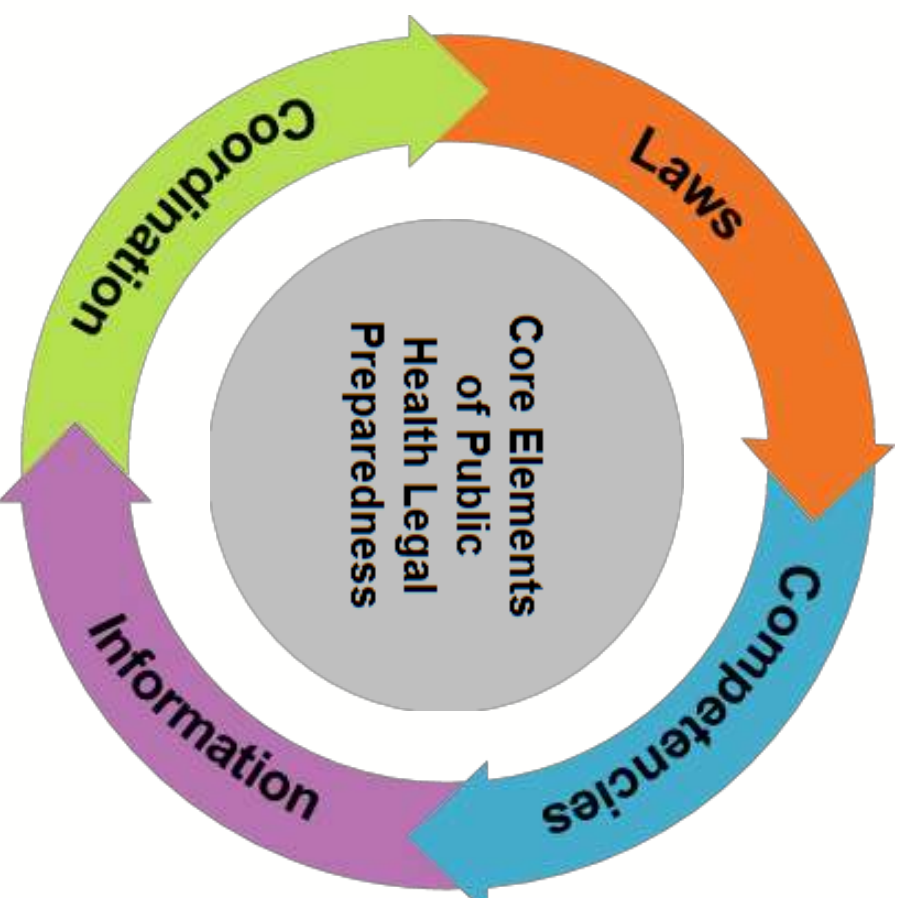


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Legal Preparedness for Public Health Emergencies

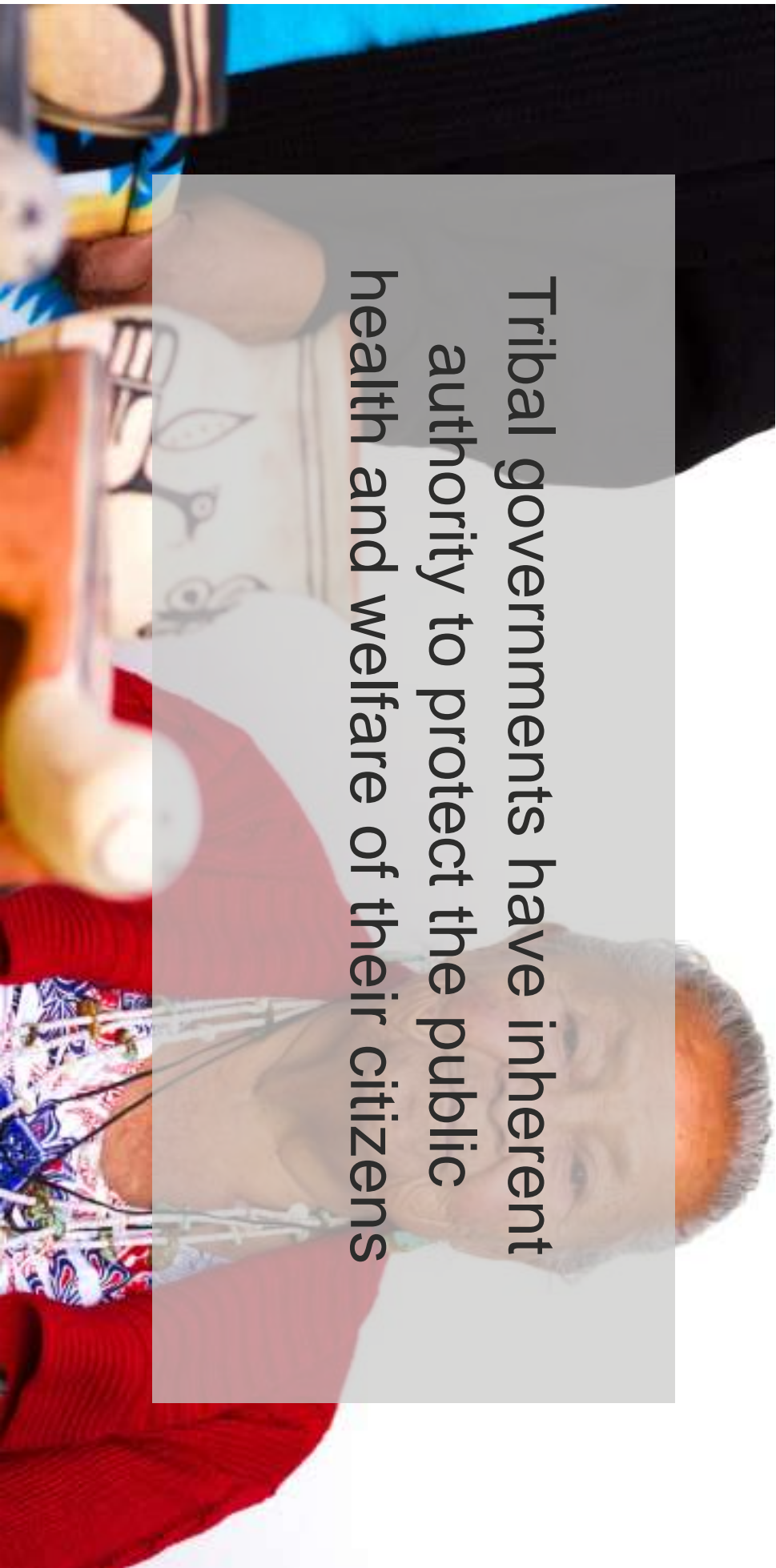


Tribal Public Health Legal Preparedness



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Tribal Legal Preparedness: Inherent Authority



Tribal governments have inherent authority to protect the public health and welfare of their citizens

Intergovernmental Agreements in Emergency Preparedness

- Address cross-jurisdictional goals and resolve outstanding differences and legal uncertainties *before* a disaster or emergency occurs
- Leverage collective resources in manpower, funding, equipment, etc.
- Establish and specify roles, responsibilities, and authorities
- Foster increased trust, communication, and an understanding of mutual priorities



PREPARING FOR A PUBLIC HEALTH EMERGENCY TRIBAL LEGAL PREPAREDNESS PROJECT

- Home
- Who We Are
- Training
- Train the Trainer
- Resource Library
- News and Events
- Contact

Welcome to the Tribal Legal Preparedness Project

Public health emergencies, including infectious disease and natural disasters, are issues that every community faces. To address these threats, it is critical for all jurisdictions to understand how law can be used to enhance public health preparedness, as well as improve coordination and collaboration across jurisdictions. As sovereign entities, Tribal governments have the authority to create their own laws and take the necessary steps to prepare for and respond to public health emergencies. Thus, legal preparedness for Tribal governments is crucial to public health response. There are 573 federally recognized Indian Tribes in the United States, each of which is a sovereign entity with authority to create laws. The Tribal Legal Preparedness Project (TLPP) has been established to assist Tribal Nations interested in expanding their legal preparedness capacity.



Tribal Legal Preparedness Project

A 729 Public Health
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Pittsburgh, PA 15261
Phone: 412-383-2400
Fax: 412-383-222
E-mail: tlpp@pitt.edu

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Training

Four modules were developed by the TLPP:

- What Is Legal Preparedness And Why Is It Important To Tribal Nations
- Jurisdictional Issues And Using The Law To Enhance Cross Jurisdictional Collaboration
- Disaster Declarations
- Best Practices

The modules provide an introduction to legal preparedness that can be used to educate Tribal leadership, discuss how the law can be used to achieve cross-jurisdictional coordination, and explain the disaster declaration mechanism, including the new direct Tribal disaster declaration process. The last module provides an array of best practices shared by Tribal Nations, including audio and video recordings of Tribal public health/emergency management practitioners, so that Tribal Nations are sharing their success stories and helping other Tribes.

What Is Legal Preparedness And Why Is It Important To Tribal Nations

This first module in the series of modules provides an overview of legal preparedness, discusses the importance of the law to public health emergencies, and describes ways the law can enhance preparedness for Tribal Nations.

Learning objectives

- Define legal preparedness and its importance to public health emergencies;
- Describe why Tribal Nations should be concerned about preparedness and how laws can enhance preparedness for Tribal Nations; and,

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Train the Trainer

Public health emergencies are matters of serious concern for every community. Therefore, it is critical for all jurisdictions, including Tribal Nations, to have the capacity to effectively respond to these threats. The Tribal Legal Preparedness Project (TLPP) created two in person training programs, a half-day and a 2-hour training, designed to assist Tribal Nations and their key partners with enhancing their public health legal preparedness capacity and better coordinate emergency preparedness, response, and recovery activities across jurisdictions.

The Training Manager Guide is a step-by-step guide created to help Tribal Nations and their key partners conduct their own public health legal preparedness training. The TLPP encourages training managers to use this guide and sample documents to prepare for and deliver upcoming training related to legal preparedness. Content for the in-person trainings are available for download below. The content may be modified and/or customized to meet the needs of the community intending to conduct these trainings.

Tribal Legal Preparedness Project (Half-Day Training)

Guide

Sample PowerPoint

- [What is Legal Preparedness and Why is it Important to Tribal Nations?](#)
- [Jurisdictional Issues and Using the Law to Enhance Cross Jurisdictional Coordination](#)
- [Disaster Declarations](#)
- [Tribal Legal Preparedness Best Practices Toolkit](#)

Sample Agenda

Sample Speaker Biographies

Sample Resources

- [What is Legal Preparedness and Why is it Important to Tribal Nations?](#)
- [Jurisdictional Issues and Using the Law to Enhance Cross Jurisdictional Coordination](#)
- [Disaster Declarations](#)
- [Tribal Legal Preparedness Best Practices Toolkit](#)

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Articles

- [Government Documents](#)
- [Other Documents](#)
- [Reports](#)
- [Toolkits](#)
- [Useful Websites](#)
- [Sample Plans, Codes, Compacts, Regulations, and Agreements](#)
- [Webinars and Trainings](#)
- [Tribal](#)

Resource Library

Public health emergencies, including infectious disease outbreaks and natural disasters, are issues that every community faces. To address these threats, it is critical for all jurisdictions to understand how law can be used to enhance public health preparedness, as well as improve collaboration and coordination across jurisdictions. This Resource Library is designed to provide relevant resources to Tribal Nations seeking to enhance their legal preparedness capacity. While most resources have a Tribal focus, some resources are included that are generally applicable to legal preparedness for public health emergencies and natural disasters.

Articles

[Administrative Preparedness Strategies: Expediting Procurement and Contracting Cycle Times During an Emergency](#)

This article describes an assessment of whether administrative preparedness processes that were intended to expedite the acquisition of goods and services during a public health emergency affect estimated procurement and contracting cycle times using data from 2014-2015 applications to the Hospital Preparedness Program and Public Health Emergency Preparedness (HPP-PHEP) cooperative agreements. *Public Health Reports (2017)*

[Assessing Cross-sectoral and Cross-jurisdictional Coordination for Public Health Emergency Legal Preparedness](#)

This article highlights the need for coordinated planning and action among jurisdictions when responding to disasters and emergencies. *Journal of Law, Medicine and Ethics (March 3, 2008)*

[Assessment of Public Health Workforce Bioterrorism and Emergency Preparedness Readiness Among Tribes in Washington State: a Collaborative Approach Among the Northwest Center for Public Health](#)

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THE IMPORTANCE OF TRIBAL LEGAL PREPAREDNESS: BATTLING THE OPIOID CRISIS

Examples of Opioid Types and Names

Source	Type	Generic Name	Brand Name Examples
Prescription Opioids	Natural Opioids	Morphine	MS Contin
		Codeine	Tylenol with Codeine
	Semi-Synthetic Opioids	Oxycodone	Percocet, Oxycontin
		Hydrocodone	Vicodin
		Hyromorphone	Dilaudid
		Oxymorphone	Opana
		Meperidine	Demerol
		Buprenorphine	Suboxone
		Methadone	Dolophine
		Fentanyl	Duragesic, Sublimaze
Tramadol	Ultram, Conzip		
Illegal Opioids	Heroin	Processed from morphine, a natural opioid	
	Illicitly Manufactured Fentanyl	Lab-made synthetic opioid, often mixed with other products, such as heroin, cocaine	

Opioids – A Problem of Supply and Demand

The opioid epidemic in AI/ANs is a complex problem of supply and demand impacting local communities. Opioids are available for abuse due to a variety of issues and the increasing demand for opioids results from a number of challenges and conditions that are driving the epidemic.

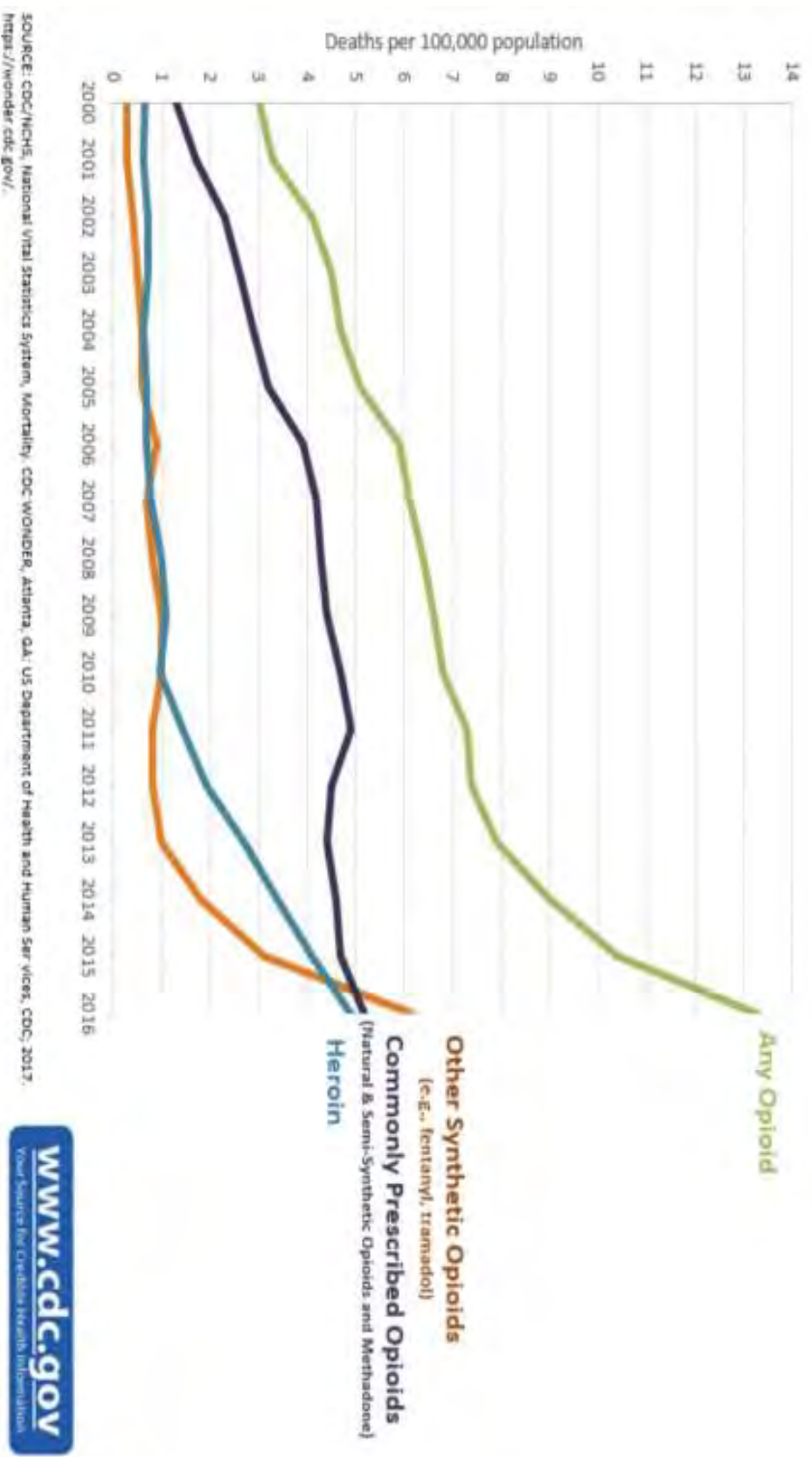
Supply of Opioids

- Provider prescription and over-prescription
- Overuse of opioids in pain management practices
- pharmacy supply- improper access, diversion, or security breaches
- Impaired provider access, diversion, self-prescription
- Community access through drug dealers, theft of prescribed opioids
- Pharmaceutical company distribution of large amounts of opioids in communities
- Illegal manufacturing

Demand for Opioids

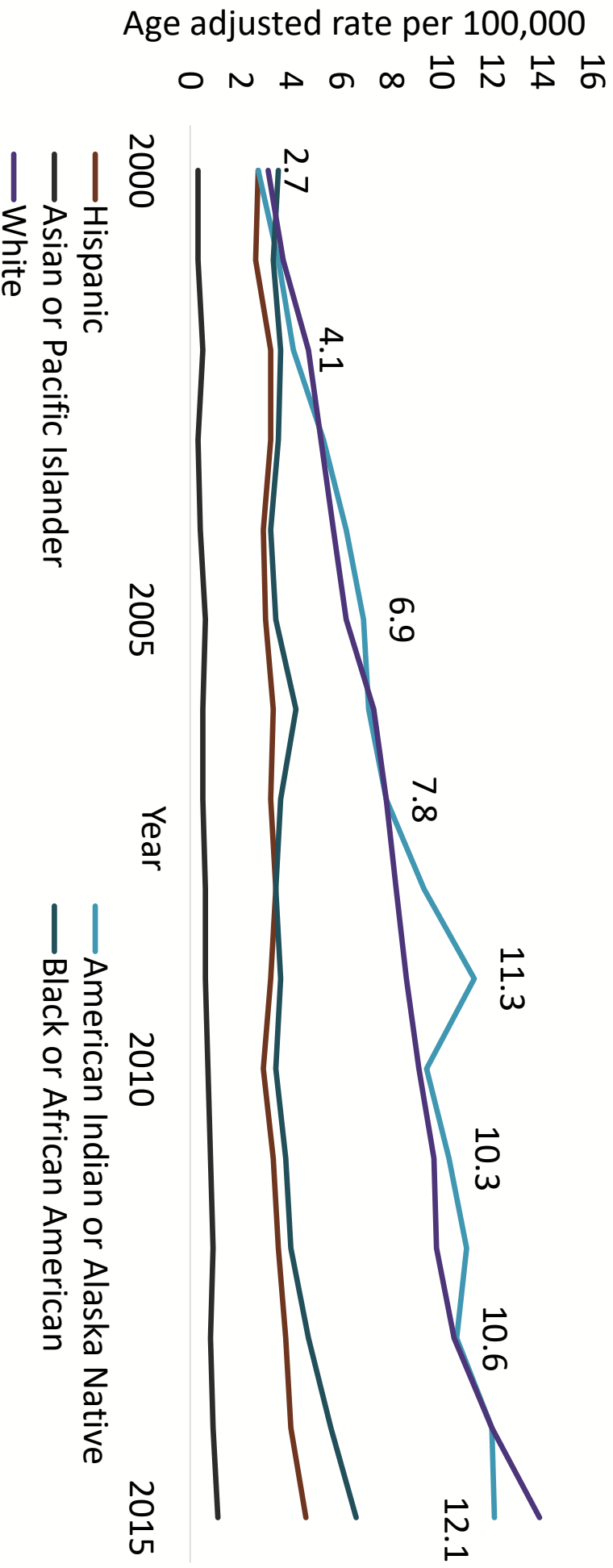
- Lack of access to appropriate care for conditions requiring pain management
- Use for relief of mental health issues, trauma, chronic stress
- Cause of substance abuse/addiction, overdose, neonatal abstinence syndrome
- Usage by impaired providers
- Poverty, unemployment and economic opportunity in drug trafficking, sales, theft
- Lack of access to prevention/treatment/recovery services
- Lack of funding to address the opioid epidemic

Overdose Deaths Involving Opioids, by Type of Opioid, U.S., 2000-2016



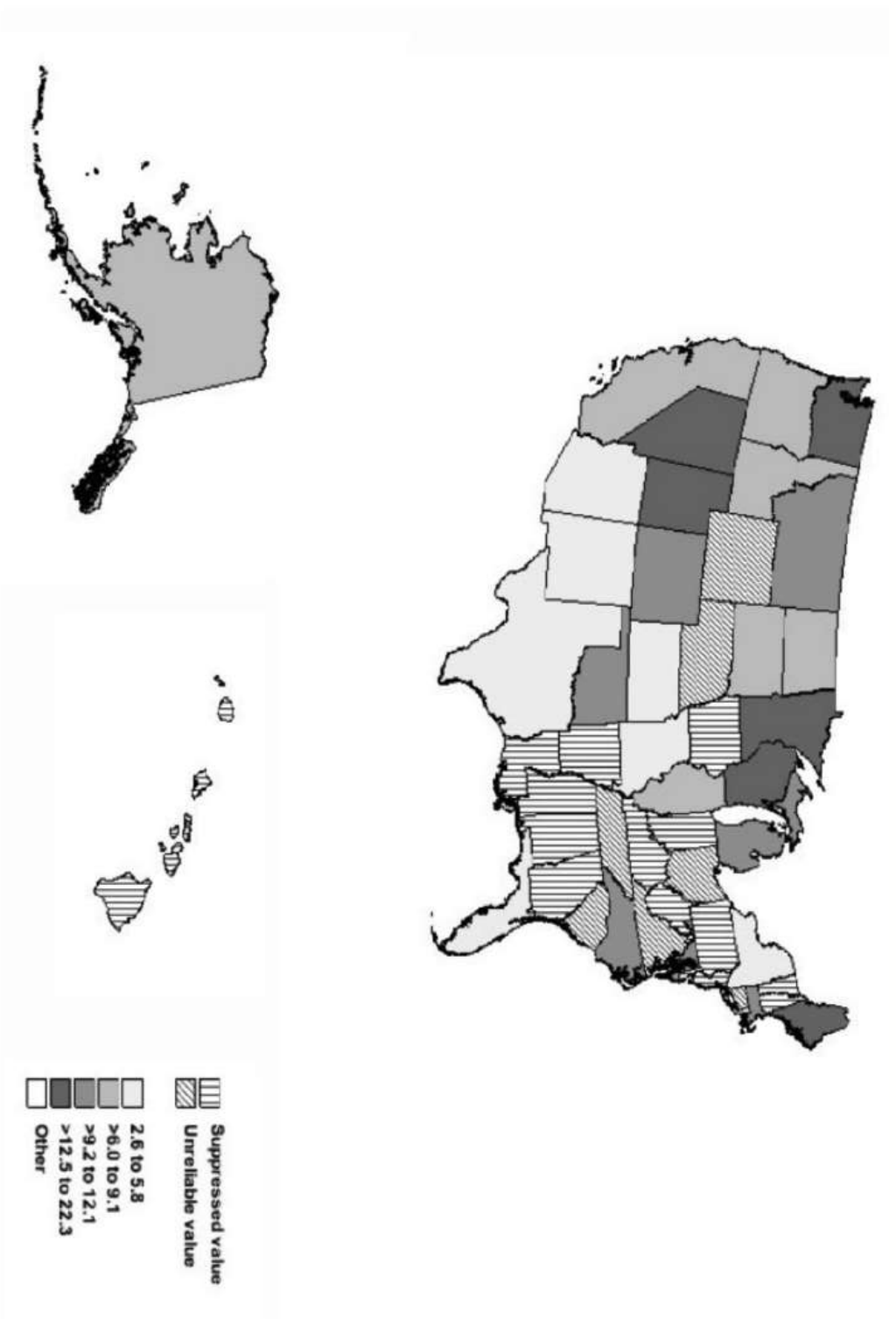
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Prescription And Illicit Opioid Overdose Death by Race/Ethnicity — WONDER, 2000-2015

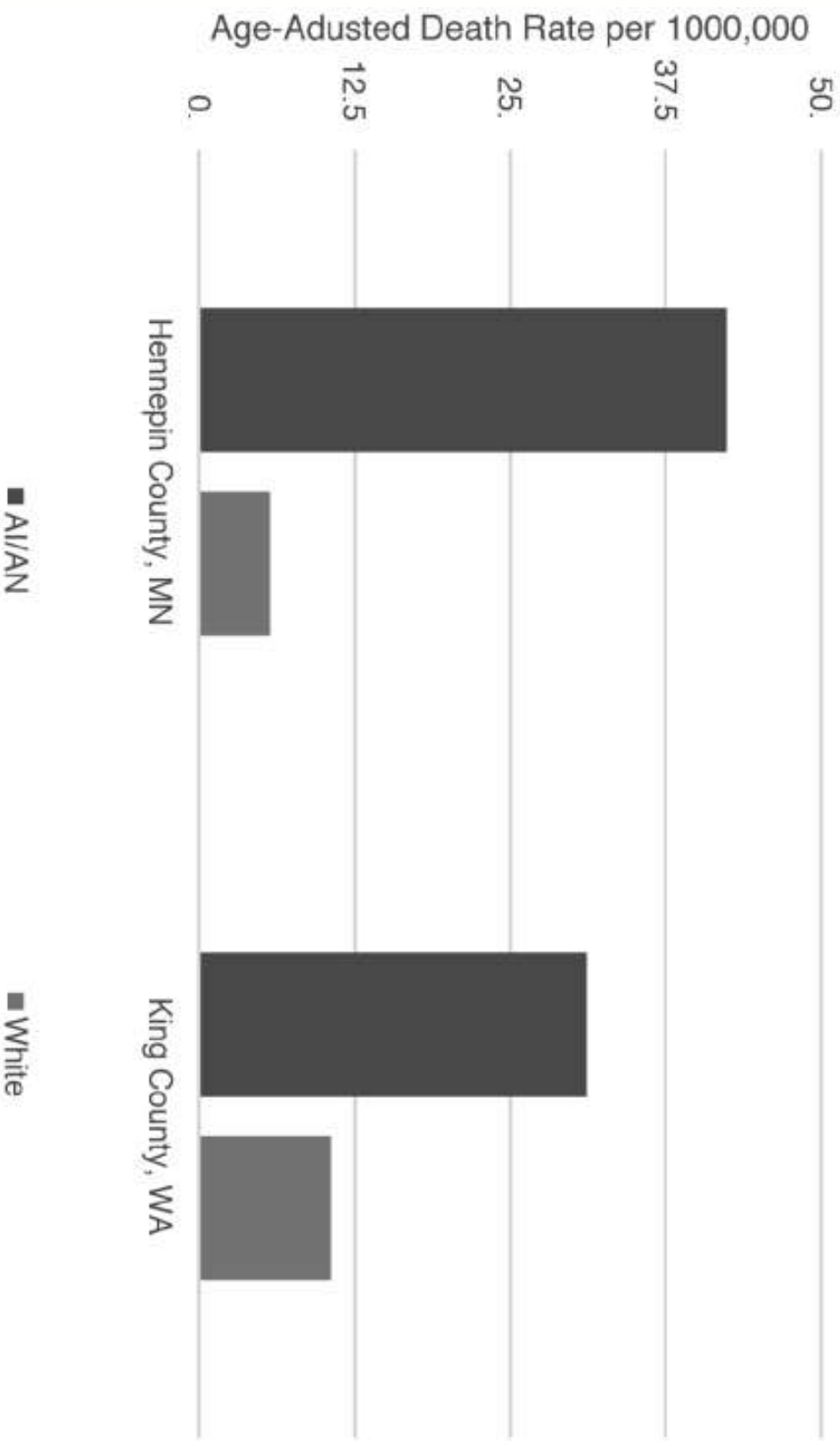


Centers for Disease Control and Prevention, National Center for Health Statistics. Multiple Cause of Death 1999-2015 on CDC WONDER Online Database, released December, 2016. Data are from the Multiple Cause of Death Files, 1999-2015, as compiled from data provided by the 57 vital statistics jurisdictions through the Vital Statistics Cooperative Program. Accessed at <http://wonder.cdc.gov/mcd-icd10.html> on Nov 20, 2017 1:04:04 PM

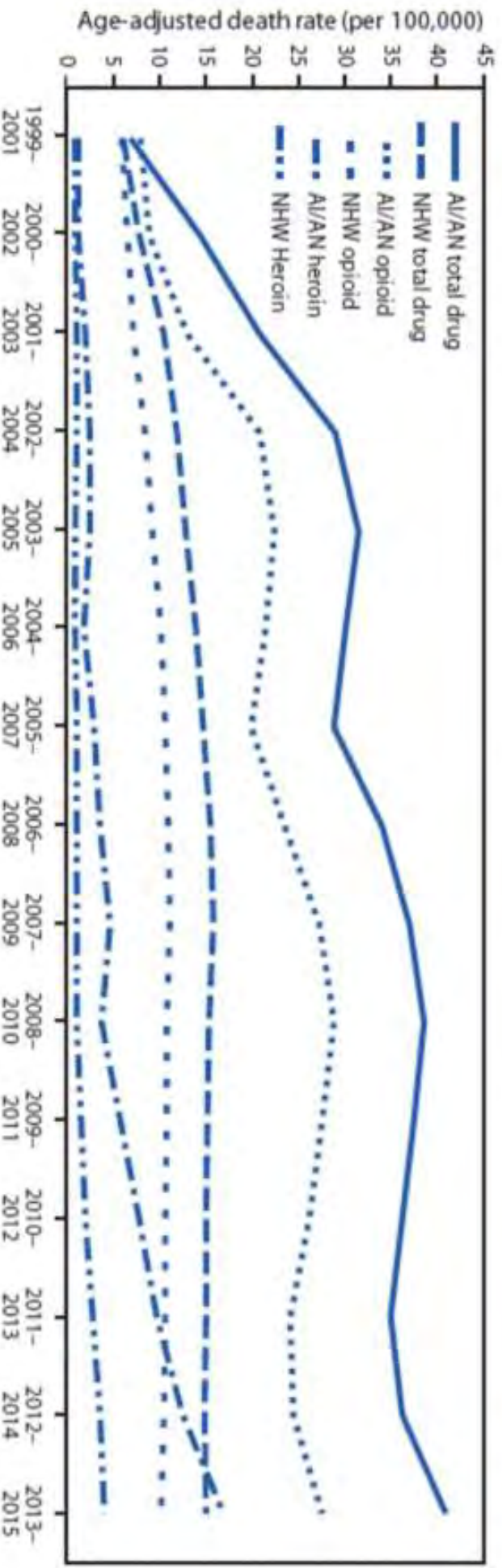
Opioid Overdose Age-Adjusted Rates by State for AI/AN: 1999-2016



Opioid Overdose Mortality Rates by Race in Hennepin County, MN and King County, WA



Age-adjusted death rates per 100,000 for total drug, opioid-involved, and heroin-involved overdose deaths among American Indians/Alaska Natives and non-Hispanic whites — Washington, 1999–2015



Abbreviations: AI/AN = American Indian/Alaska Native; NHW = non-Hispanic white.

LEGAL ACTIONS TO ADDRESS THE OPIOID CRISIS

Legal Actions Related to Prevention of Inappropriate Prescribing and Use of Prescription Opioids

- Prescription drug monitoring programs (PDMPs)
- Quantitative limits on prescriptions
- Patient identification requirements
- Physician examination or pharmacy verification
- Doctor/pharmacy shopping restrictions
- Tamper-resistant prescription forms
- Pain-clinic regulations
- Controlled substances rescheduling (schedule III to II)
- Medical/recreational marijuana use

Legal Actions Related to Harm Reduction Strategies to Reduce Opioid Overdose Deaths

- Immunity provided to naloxone prescribers, pharmacists, dispensers, and naloxone administration
- Naloxone possession by laypeople
- Authorized prescribing and dispensing (e.g., 3rd party, standing orders)
- Training, certification, and/or education required for pharmacies and/or patients
- Needle sharing, needle disposal, and safe injection site laws
- Good Samaritan laws (e.g., for first responders)

SELECT FEDERAL LEGAL ACTIONS IN RESPONSE TO THE OPIOID CRISIS

Opioid Crisis: National Public Health Emergency



DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Washington DC 20201

DETERMINATION THAT A PUBLIC HEALTH EMERGENCY EXISTS

As a result of the consequences of the opioid crisis affecting our Nation, on this date and after consultation with public health officials as necessary, I, Eric D. Hargan, Acting Secretary of Health and Human Services, pursuant to the authority vested in me under section 319 of the Public Health Service Act, do hereby determine that a public health emergency exists nationwide.

Date 10/26/2017

Eric D. Hargan /s/
Acting Secretary

The SUPPORT for Patients and Communities Act

- Signed into law by President Trump on October 24, 2018 with bipartisan support
- Does not provide a comprehensive and coordinated federal strategy, but takes many positive steps
- Biggest flaw = lack of funding for wide and sustained expansion of addiction treatment

IHS Response to the Opioid Crisis

- National Committee on Heroin Opioids and Pain Efforts
- IHS-BIA Memorandum of Understanding for naloxone distribution
- IHS Prescription Drug Monitoring Program policy

CDC Guideline for Prescribing Opioids for Chronic Pain

- Issued in March 2016
- Focused on treating chronic pain outside of active cancer treatment, palliative care, and end-of-life care
- April 2019 NEJM commentary outlined examples of misapplication of the Guidelines that can risk patient health and safety

SAMHSA

- Tribal Opioid Response Grants
- National Tribal Behavioral Agenda

NIH/IHS/SAMHSA Tribal Consultation/Listening Session on the Opioid Crisis in Indian Country

- Two-day session at the National Indian Health Board's 9th Annual National Tribal Public Health Summit in 2018
- Provided a setting to gather feedback, exchange ideas, and explore new partnerships and opportunities
- Allowed for sharing of approaches that are successful in Tribal communities

SELECT TRIBAL LEGAL ACTIONS IN RESPONSE TO THE OPIOID CRISIS

Tribal Emergency Declarations

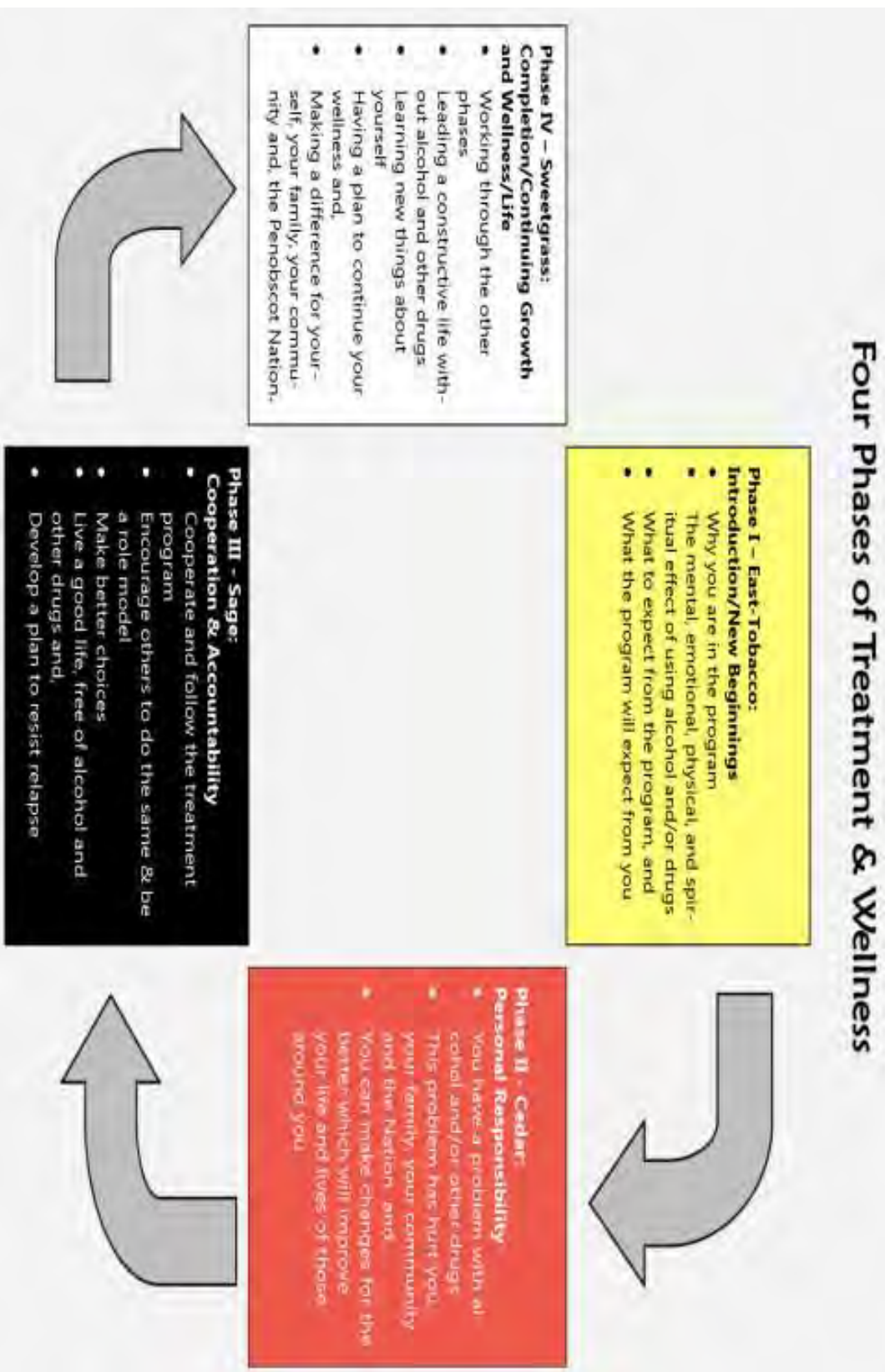
- Red Lake Nation
- Leech Lake Band of Chippewa Indians
- White Earth Nation
- Mashpee Wampanoag Tribe
- Bad River Band of Lake Superior Chippewa
- Little River Band of Ottawa Indians
- Lummi Nation

Banishment

- Red Lake Nation declared a public health emergency in July 2011
- Developed a banishment protocol after the declaration
 - Tribal police or prosecutors must submit petition that individual is engaging in drug-related activity
 - Civil hearing held and decision rendered on a case-by-case basis
- Banishment term must be at least 1 year, but not more than 5 years

Penobscot Indian Nation Healing to Wellness Court

Four Phases of Treatment & Wellness



Adoption of Policies Regarding Dispensing and Utilization of Controlled Substances

- Resolution by the governing body of the Confederated Salish and Kootenai Tribes of the Flathead Nation to adopt the “Controlled Substance Utilization and Dispensing Limitation Policy”
 - Provides guidance regarding quantity limits and acceptable parameters for the utilization of certain controlled substances
 - Requires the offering of alternatives to chronic pain including access to pain specialists and non-pharmacological options

911 Good Samaritan Statutes

Types of protections

- Immunity from arrest, charge, and/or prosecution for controlled substance possession crimes
- Immunity from arrest, charge, and/or prosecution for drug paraphernalia possession crimes
- Immunity from other controlled substance-related crimes
- Immunity from being considered in violation of protective/restraining orders, parole, probation and/or pretrial conditions

911 Good Samaritan Statutes

- Factors that limit the use of these laws
 - Lack of awareness
 - Skepticism and lack of trust
- How to overcome these factors:
 - Educating law enforcement and other criminal justice professionals, drug users, health care practitioners, and the general public

911 Good Samaritan Statute

- Tulalip Tribe: Lois Luella Jones Law
- Provides for protection from arrest from charges for:
 - Possession of illicit substances or paraphernalia
 - Underage drinking
 - Contributing to a minor
- In addition, cannot be arrested for non-violent misdemeanor warrants and cannot be sole reason to modify or revoke probation/parole
- Immunity extends to all present who cooperate with medical staff

Naloxone Administration

- Paiute Indian Tribe of Utah: Opioid Overdose Recognition and Naloxone Administration Policy and Procedure
 - Provides training to Tribal employees and interested community members regarding how to use naloxone to reduce the number of opioid-related deaths
 - Naloxone provided by the Utah Naloxone Program
 - References Utah state law regarding naloxone prescription, possession, administration and liability



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Version 1.5

Minnesota Chippewa Tribes Tribal Opioid Summit, 2017

- Tribal leaders from nine of Minnesota's reservations and Sioux communities attended the two-day summit
 - Day 1: remarks from Tribal leaders and presentations from invited speakers who work directly with Tribal communities
 - Day 2: breakout sessions to seek input and develop an action plan

North Dakota Grants to Tribes

- The North Dakota Department of Human Services awarded \$70,000 to four Tribes to increase access to naloxone, increase access to medication-assisted, peer support and other recovery services
 - Mandan, Hidatsa and Arikara Nation
 - Spirit Lake Nation
 - Standing Rock Sioux Tribe
 - Turtle Mountain Band of Chippewa Indians

Litigation

- Hundreds of lawsuits filed by states, cities, counties, and Tribal Nations against opioid manufacturers, distributors, physicians, and retailers: *In re National Prescription Opiate Litigation*
- Many cases consolidated in MDL in Ohio
 - Separate track created in June 2018 for Tribes
 - 448 Indian tribes filed an amicus brief in Tribal bellweather case
- Tribal Nations have also filed separate actions in different districts

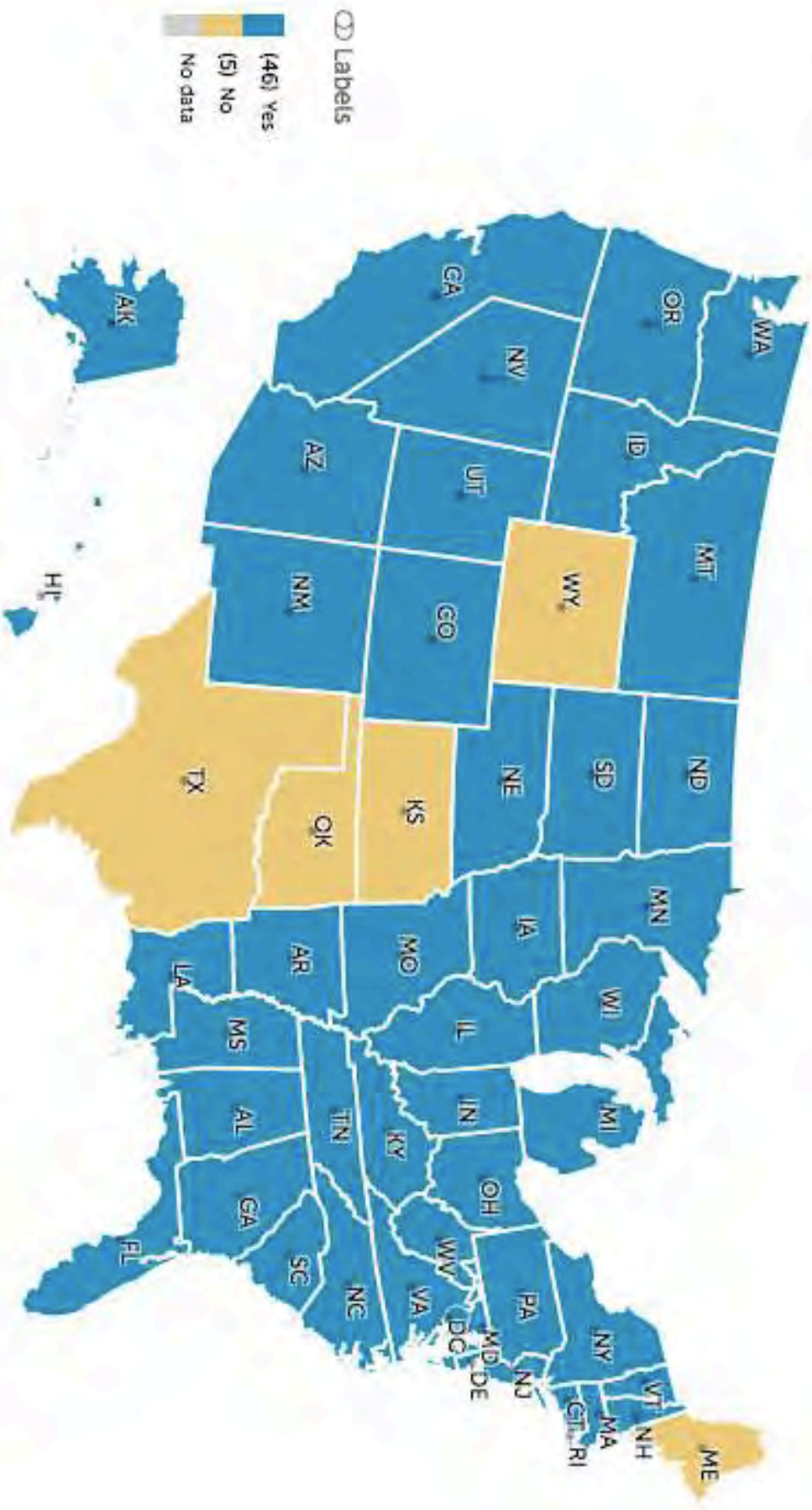
SELECT STATE LEGAL ACTIONS IN RESPONSE TO THE OPIOID CRISIS

State Opioid Emergency Declarations

Action	MA	VA	AK	MD	FL	AZ	SC	PA
Naloxone Standing Order	3/27/14 - TBD	11/21/16 - TBD	2/14/17 - 2/14/18	3/1/17 - 4/30/17	5/3/17 - 10/27/17	6/5/17 - 5/29/18	12/18/17 - TBD	1/10/18 - 9/26/18
First Responders Can Carry/Distribute Naloxone	X		X		X	X		X
Enhanced PDMP Surveillance	X					X		X
Opioid Prescribing Restrictions	X*						X	
Increased Funding for Treatment				X	X			
Interagency Coordination				X		X	X	X

911 Good Samaritan Statutes

7/1/18 Does the jurisdiction have a drug overdose Good Samaritan Law?



Naloxone Access Laws

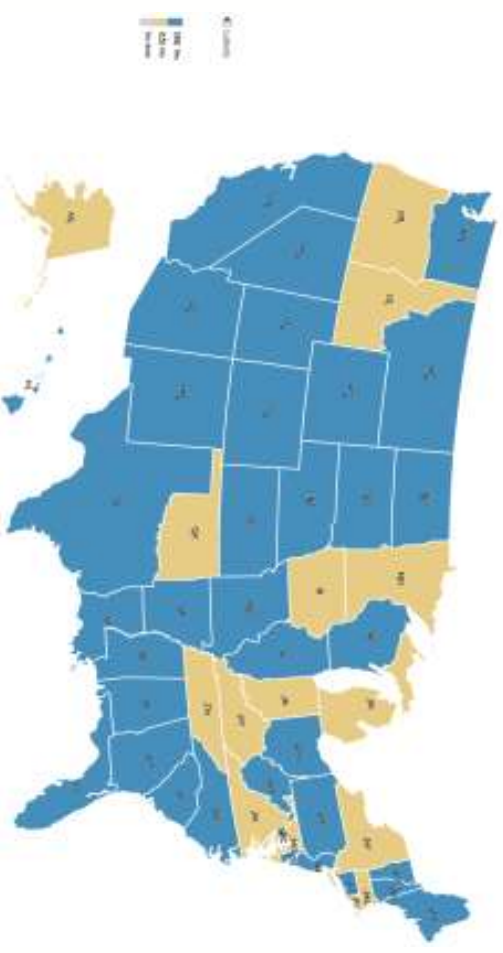
- Prescriber immunity
- Third party prescription
- Standing order
- Lay dispensing

Immunity from criminal prosecution for prescribing, dispensing or distributing naloxone to a layperson

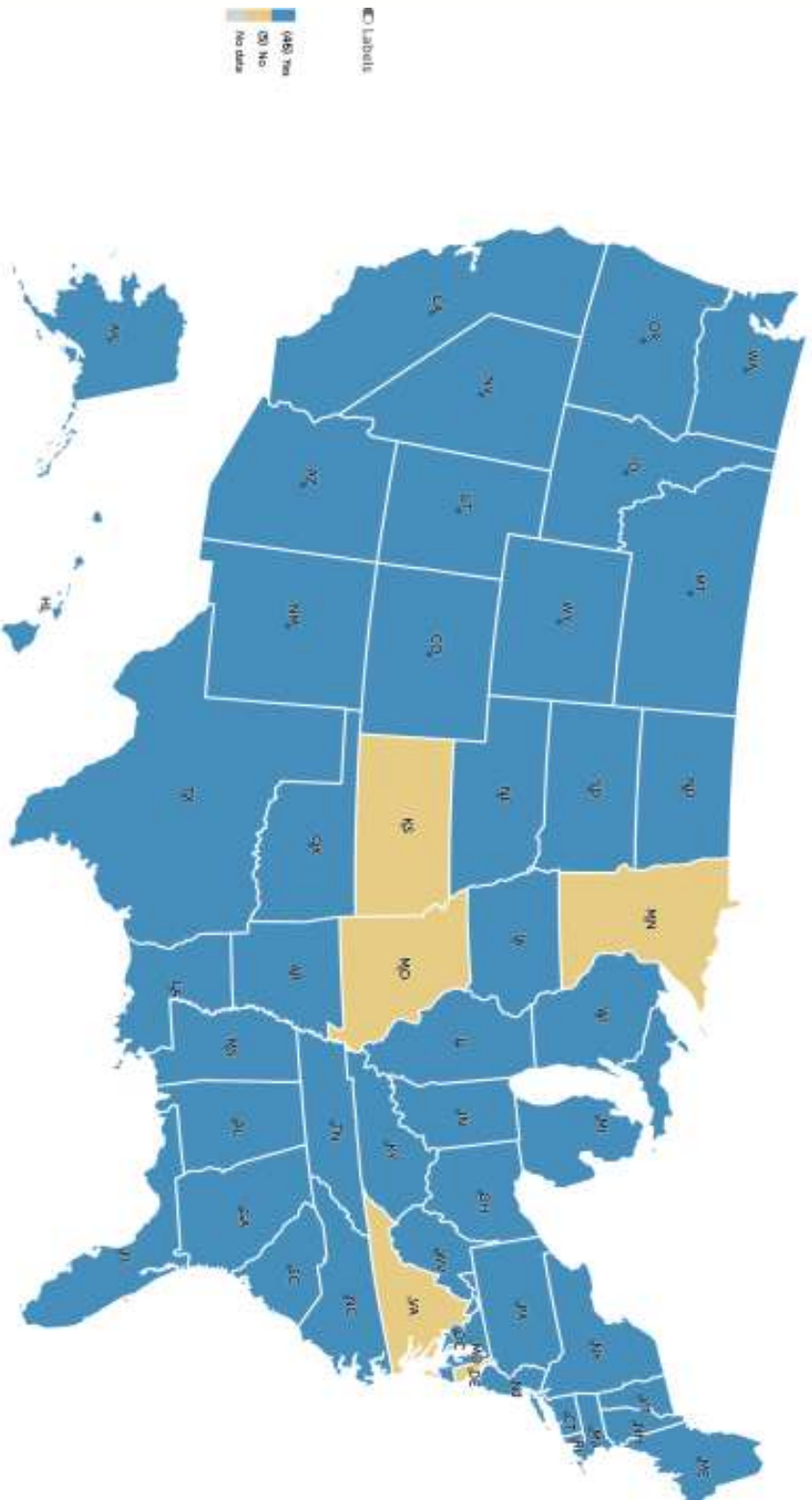
Prescribers



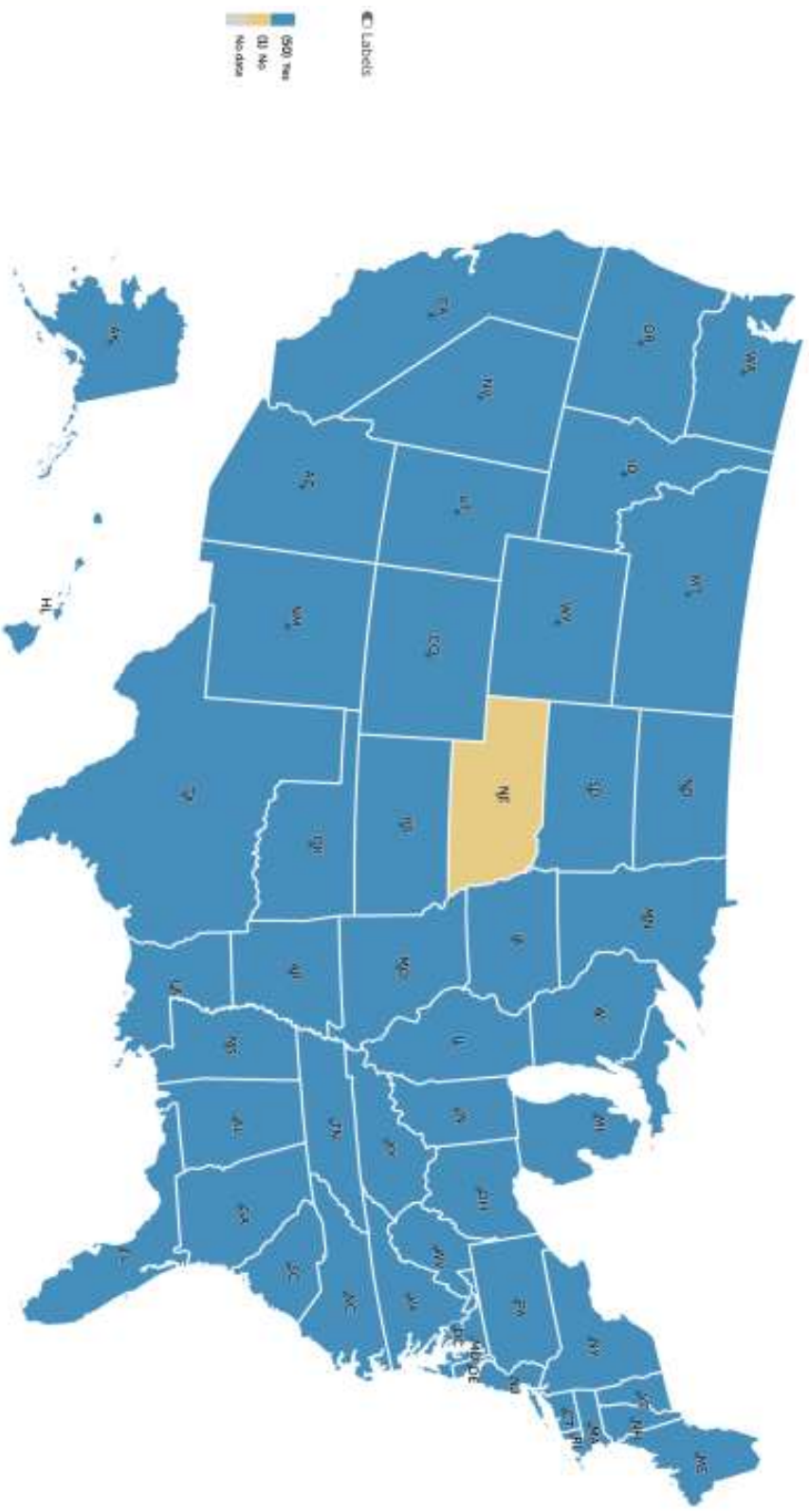
Dispensers



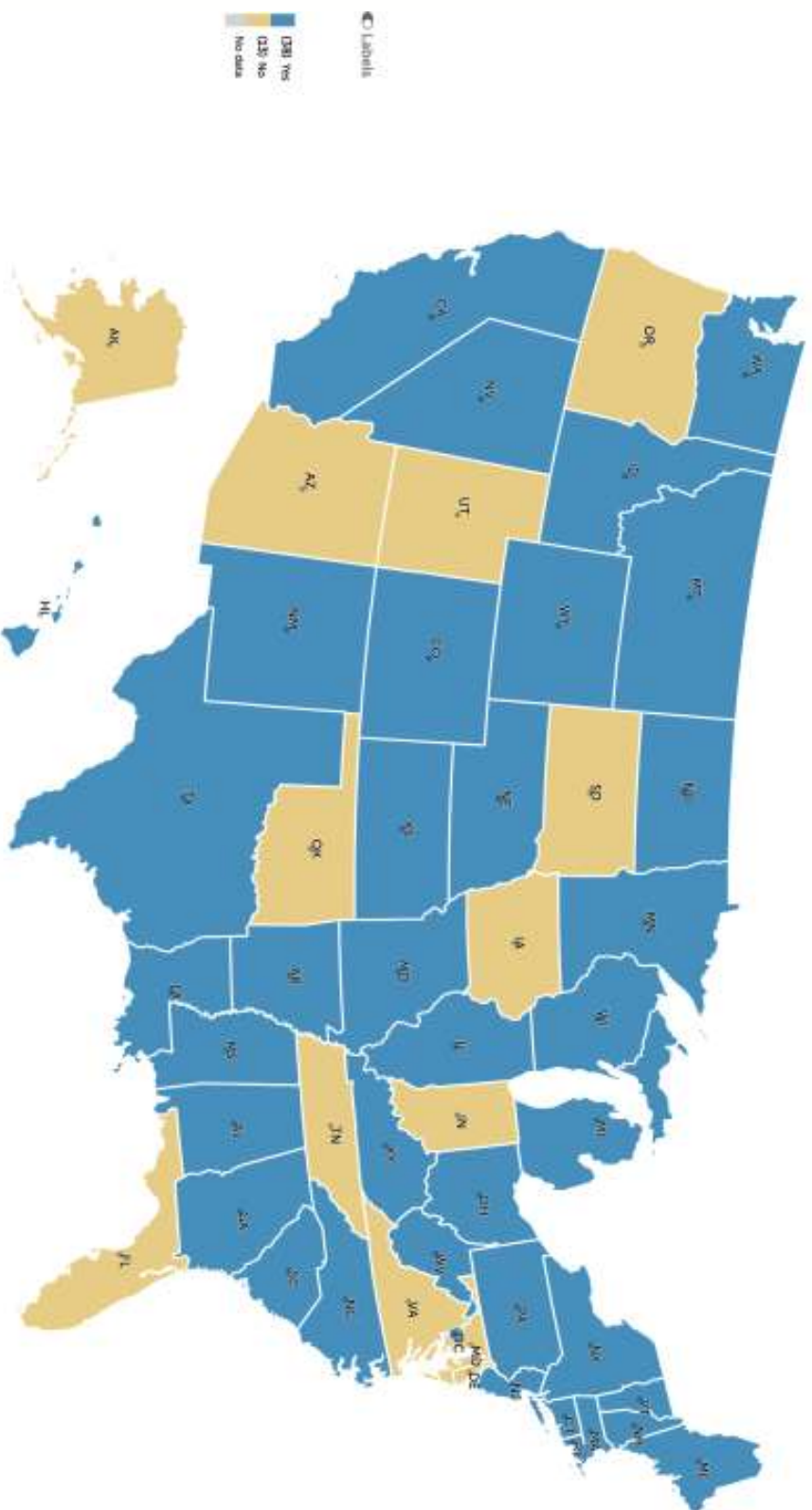
Prescriptions of naloxone authorized to third parties



Pharmacists permitted to dispense without patient-specific prescription

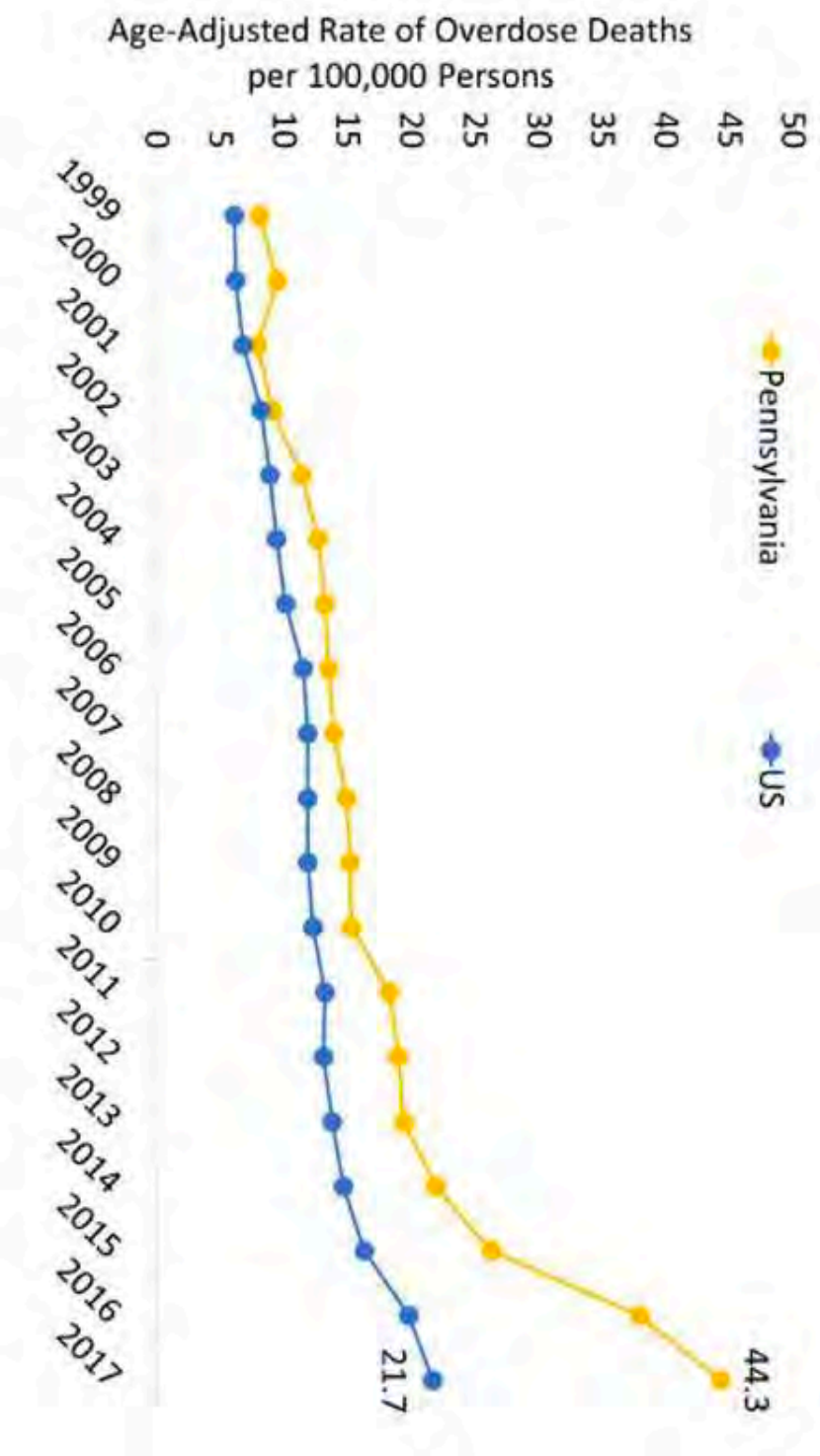


Layperson immunity from criminal liability when administering naloxone



Pennsylvania

Drug overdose deaths, rate per 100,000 persons, in the U.S. and Pennsylvania



Spotlight on Pennsylvania

Leading-Edge Practices and Next Steps
in Ending the Opioid Epidemic

DECEMBER 2018



- Standing order for naloxone
- Encouraging more providers to offer MAT
- Implementing warm handoffs

Spotlight on Pennsylvania

Leading-Edge Practices and Next Steps
in Ending the Opioid Epidemic

DECEMBER 2018

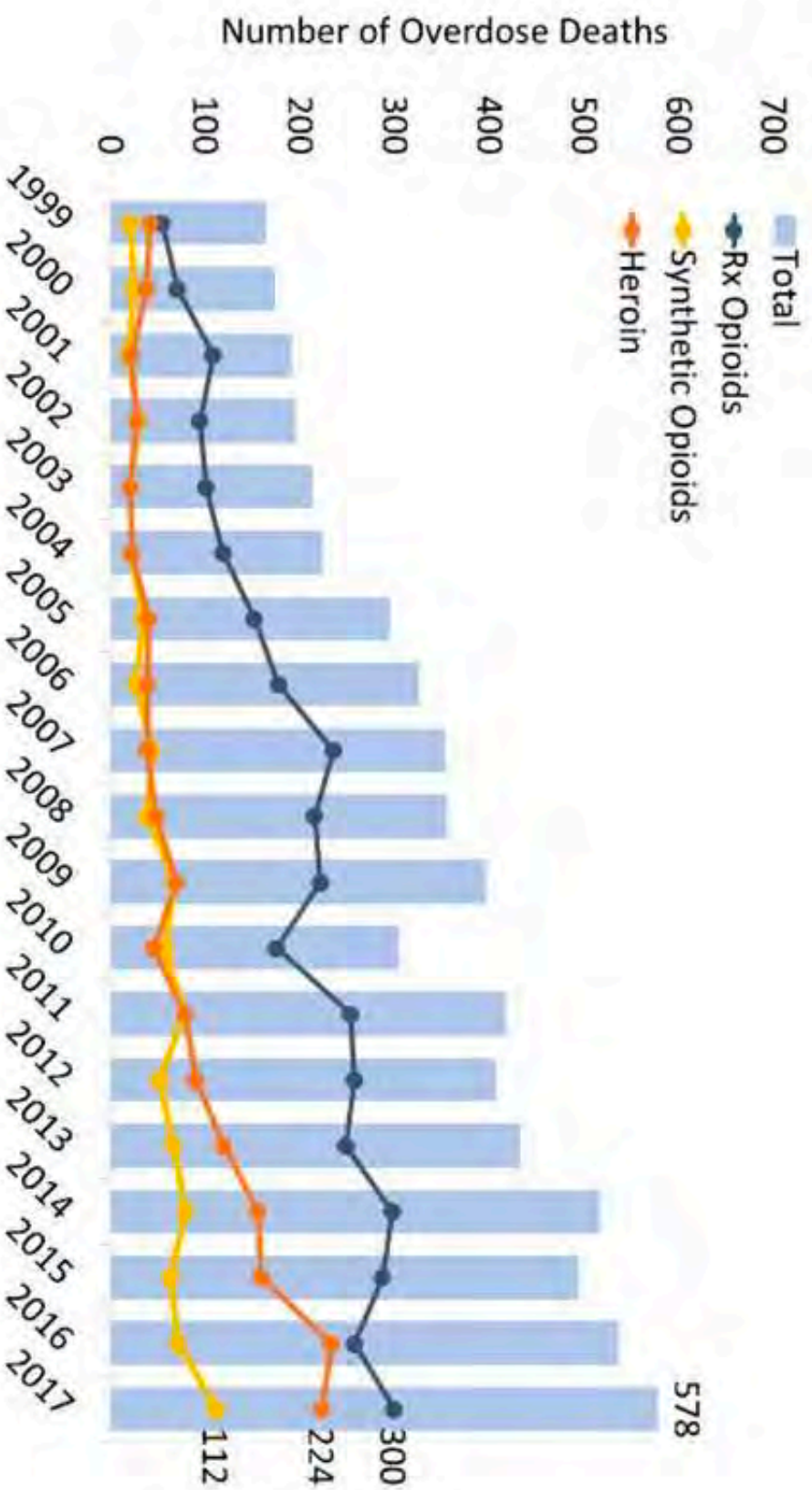


- Removes prior authorization requirements for MAT services
- Established 45 Centers of Excellence
- Increase enforcement of parity laws
- Expanded non-opioid pain management services within Medicaid

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Colorado

Number of overdose deaths involving opioids in Colorado, by opioid category.



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Spotlight on Colorado

Best Practices and Next Steps in the Opioid Epidemic

JANUARY 2019



COLORADO
MEDICAL SOCIETY



- Reduce prior authorization barriers to MAT treatments
- Expanding health care professionals in rural and underserved areas
- Implemented a standing order for naloxone

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Spotlight on Colorado

Best Practices and Next Steps in the Opioid Epidemic

JANUARY 2019



COLORADO
MEDICAL SOCIETY



- Expanded non-opioid pain management services
- Establishment of the Colorado Consortium for Prescription Drug Abuse Prevention
- Implementation of the Opioid Safety Pilot Program

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Oregon

- **House Bill 2638 Passed**
 - Modifies the definition of alcohol and drug abuse prevention and treatment program in Oregon by adding “tribal”
 - Becomes effective January 1, 2020

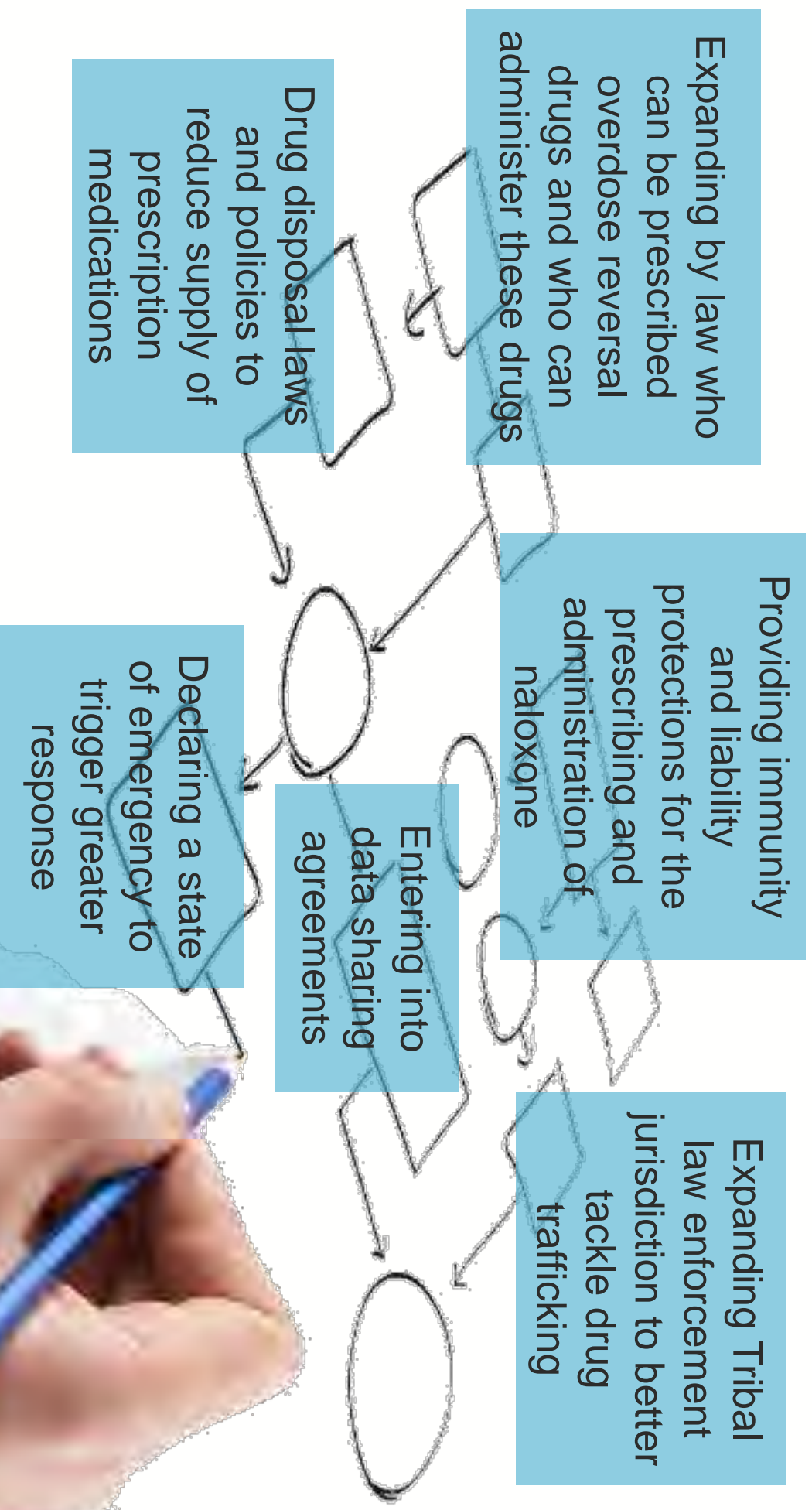
Oregon

- **Senate Bill 973** *Proposed*
 - Establishes Behavioral Health Justice Reinvestment Program administered by Behavioral Health Justice Reinvestment Grant Review Committee established in Oregon Criminal Justice Commission
 - Specifies that purpose of program is to provide grants to counties and Indian tribes to establish evidence-based programs to provide comprehensive community supports and services to individuals with mental health or substance use disorders

Oregon

- **Senate Bill 134** *Proposed*
 - Authorize authority to adopt standards to accept and consider tribal-based behavioral health care practices for American Indian and Alaska Natives as equivalent to evidence-based practices.
 - Require medical assistance programs to consider tribal-based behavioral health care practices for American Indian and Alaska Natives as equivalent to evidence-based practices and reimburse for tribal-based practices.

How Can Tribal Legal Preparedness Help Address the Opioid Crisis?



Legal Preparedness to Address the Opioid Crisis in Indian Country: Follow-Up Discussion

Today, June 13th

Cedars

10:15am – 10:55am

THANK YOU!

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