



Behavioral Health Update 2017: Idaho & Beyond

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August 3, 2017
ISB Health Law Section

Today's Topics

- New legislation
- Opioid crisis
- 21st Century Cures Act
- Veterans
- Duty to warn

Did you Know this About Idaho?

- 48/51 for overall mental health ranking --
 - *Mental Health America (11/16)*
- Last among all states for per capita spending on mental health
 - *Kaiser Family Foundation (2013 data)*
- 45/50 for national suicide rate
 - *America's Health Rankings (2015)*

2011	State
1	Maine
2	Maryland
3	Vermont
4	North Dakota
5	Connecticut
6	Massachusetts
7	New York
8	Wisconsin
9	Nebraska
10	North Carolina
11	New Jersey
12	Minnesota
13	Iowa
14	South Dakota
15	Pennsylvania
16	Illinois
17	Colorado
18	Rhode Island
19	Indiana
20	Delaware
21	District of Columbia
22	Kentucky
23	Hawaii
24	Alaska
25	Ohio
26	Florida
27	Virginia
28	West Virginia
29	Kansas
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31	Utah
32	New Hampshire
33	California
34	Texas
35	Wyoming
36	Louisiana
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38	Michigan
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Ranking the States

44	New Mexico
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All Stacked Up And No Place To Go

Psychiatric patients are being warehoused in Portland's emergency rooms in growing numbers.



PATIENT WAREHOUSE: Legacy Emanuel Medical Center in Northwest Portland boards psychiatric patients in this room.



30

Woman with mental illness stashed in jail: 'Cruel' ordeal never should have happened



Gallery: civil commitment case

A woman suffering from a severe mental illness sat locked in isolation in a Yamhill County jail for 10 days awaiting a state psychiatric bed. She was suicidal, hearing voices and unable to get proper medication to treat her psychosis.

She was never charged with a crime. Three judges tried to get her out, but she languished in the jail's medical unit: a casualty of an unprecedented breakdown in Oregon's civil commitment system.

Her experience is an extreme example of the glaring deficiencies in how the state treats people suffering from the most severe mental illnesses, often boarding them in inappropriate locations before they get long-term help.



By Maxine Bernstein | The Oregonian/OregonLive

[Email the author](#) | [Follow on Twitter](#)

on February 20, 2015 at 6:03 PM, updated February 23, 2015 at 2:41 PM



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‘Boarding’ mentally ill becoming epidemic in state

Originally published October 5, 2013 at 7:00 pm | Updated April 2, 2015 at 8:20 pm

By [Brian M. Rosenthal](#)

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Matthew Jones stripped off his clothes, kicked over a trash can and ran into Kirkland’s Juanita Beach Park. He wanted to swim across Lake Washington, find Bill Gates and kill him.

Police intercepted the distraught 35-year-old on a dock and brought him to nearby EvergreenHealth hospital, where officials classified him as dangerously mentally ill and ordered he be detained, against his will, to be treated.

Any threat to the wealthy Microsoft co-founder — and the community — was over. But Jones’ ordeal was just beginning.

On that spring night, all four of King County’s psychiatric-treatment facilities were full. So officials sent Jones to wait in Evergreen’s emergency department.

Untreated and unable to see his family, he languished for hours, and then days, in a small room. When his hallucinations grew especially vivid, the ER nurses tied him to a bed so he wouldn’t hurt himself.

BloombergBusiness.com
Launching January 20.
@business

South Carolina Psychiatric Patient Stuck 38 Days in ER

By Stephanie Armour | Jul 17, 2013 9:00 PM PT | [19 Comments](#) [Email](#) [Print](#)

When a mentally ill patient arrived **at AnMed Health Medical Centers'** emergency room in May, staff at the Anderson, South Carolina, facility scurried to find a hospital with enough room for an admission.

Everywhere was full, including a nearby psychiatric hospital. Unable to find any place that had available beds, the patient spent 13 days languishing in the ER. Such stays are increasingly common at the hospital -- in one case last year a patient was stuck in the ER for 38 days, costing the hospital



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In Crisis: Idaho's Fragmented Mental Health System Leaves Many Behind

By AUDREY DUTTON & EMILIE RITTER SAUNDERS • OCT 27, 2014



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Optum Idaho is training people in mental-health first aid. After a group activity, Rubie Gallegos explains their drawing of what anxiety feels like.

KATHERINE JONES / IDAHO STATESMAN

Roy Vopal didn't expect to live at a Boise Rescue Mission shelter in Downtown Boise this year. But the 60-year-old had a serious knee injury, then surgery, that he said left him unable to work for the first time in his life.

2017 Legislation

- HB 5: Prescription Monitoring Program enhanced
- HB 212: RxP
- HB 38: Involuntary treatment v. declaration of mental health treatment
- Funding

Opioid Epidemic



'He's blue': Louisville rattled by 151 overdoses in 4 days

By Sonia Moghe and [Wayne Drash](#), CNN

Updated 1:53 PM ET, Tue February 14, 2017



Source: CNN

Struggling to keep up with heroin overdoses 01:55

Story highlights

Louisville emergency crews responded to 151 calls about overdoses over a four-day span

"He's getting a bluish color to him," frantic 911 caller says

Louisville, Kentucky (CNN) — Ben Neal's laptop lights up with emergency calls. A paramedic and supervisor with Louisville Metro Emergency Medical Services, Neal activates the siren on his silver SUV and races off, weaving his way through Sunday traffic.

STORYLINE > AMERICA'S HEROIN EPIDEMIC

NEWS AMERICA'S HEROIN EPIDEMIC JUL 31 2017, 5:39 PM ET

One in Three Americans Took Prescription Opioid Painkillers in 2015, Survey Says

by CORKY SIEMASZKO

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► One in Three Americans Took Prescription Opioids in 2015 1:21



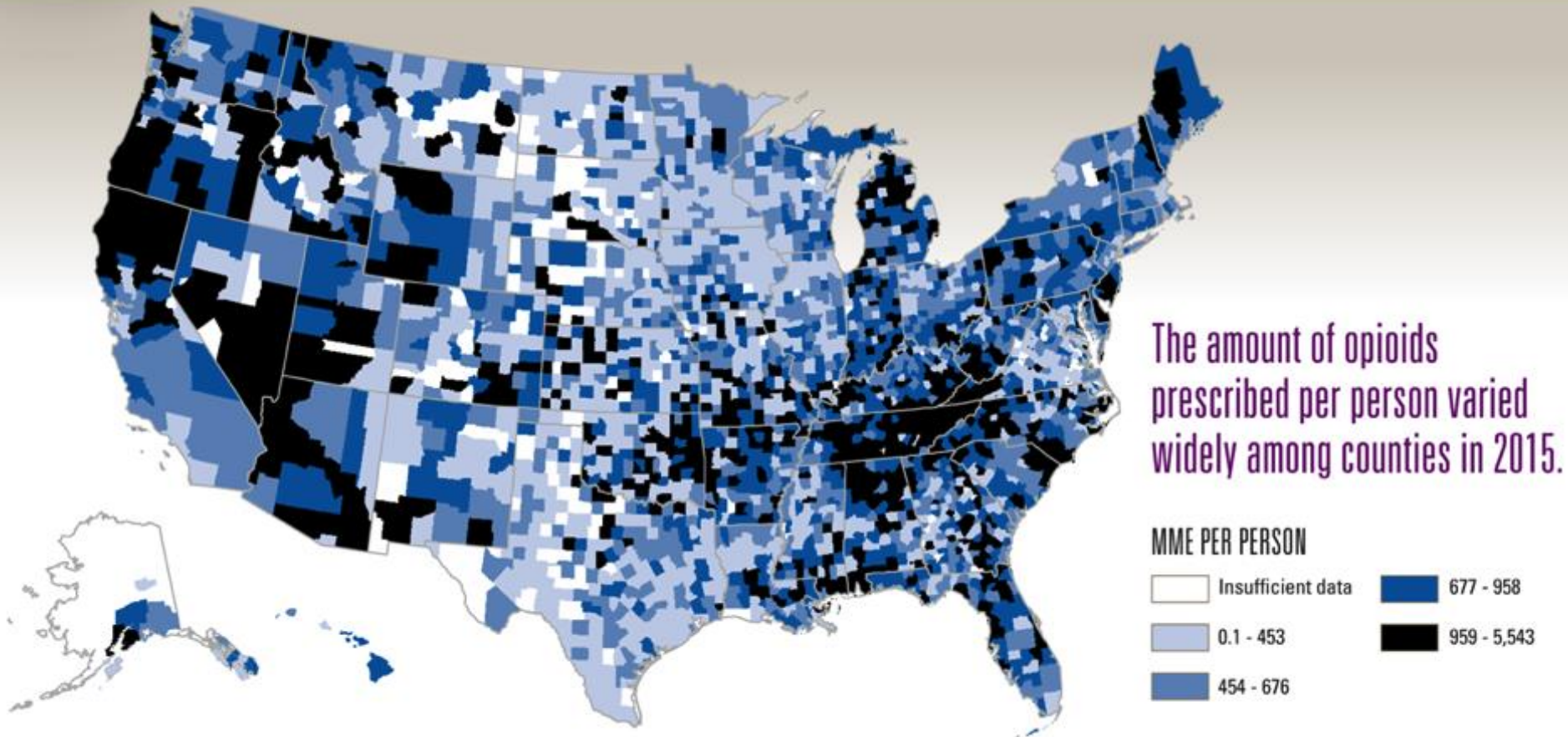
How many Americans are using prescription opioid painkillers? About one in three.

That's the stunning number in a new survey released Monday from the National Institute on Drug Abuse, which calculated that a whopping 91.8 million Americans used drugs like OxyContin or Vicodin in 2015.

Opioid Crisis Nationwide

- Massachusetts – 350% increase in opioid related deaths since 2000.
- Maryland – 62% increase in deadly overdoses in the first three quarters of 2016.
- Alaska and Maryland have declared an official state of emergency.
- Impact on rural and agricultural populations
- CDC estimates that the total economic burden of prescription opioid misuse alone in the US is \$78.5 billion a year, including costs of healthcare, lost productivity, addiction treatment, and criminal justice involvement.

CDC: Where You Live Matters

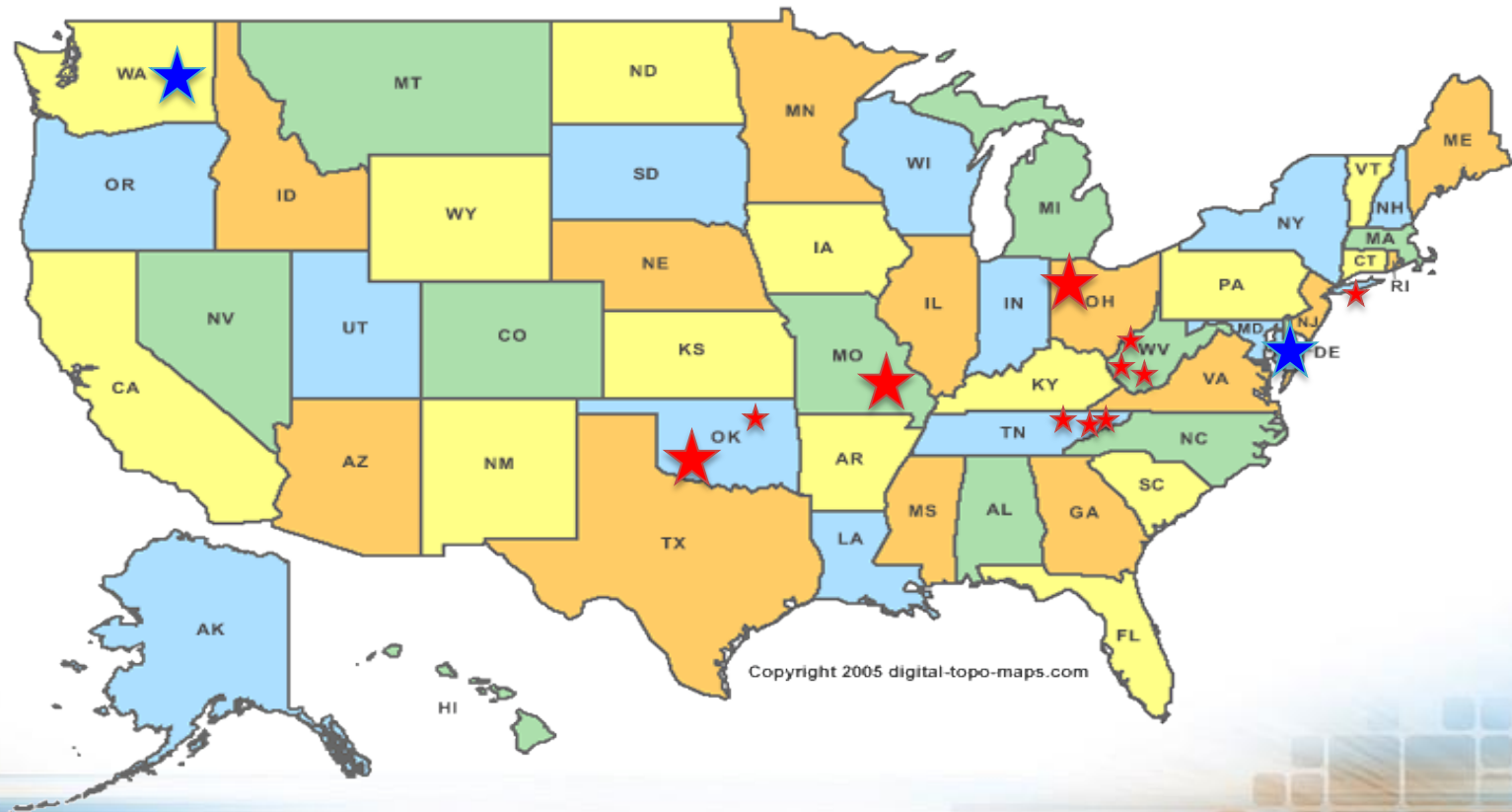


Nationwide Response

- 46 Governors signed the Compact to Fight Opioid Addiction in July 2016:
 - Take steps to reduce improper prescribing
 - Raise awareness and understanding of addiction
 - Ensure pathways to recover

Lawsuits

At least 25 states, cities and counties have filed civil cases against manufacturers, distributors, and large drugstore chains.



Opioid Crisis in Idaho

- In 2015, 218 Idahoans died from overdose, 60% of those deaths were attributed to prescription painkiller and other opioids (Center for Disease Control and Prevention).
- Idaho has been awarded an initial \$2 million for “Idaho’s Response to the Opioid Crisis.” Eligible for equal amount in second year of funding.

Idaho Response to Opioid Crisis

IROC Goal is to “increase access to treatment and recovery support services, reduce unmet treatment needs, and reduce opioid overdose-related deaths.”

– Idaho Office of Drug Policy

Idaho Response to Opioid Crisis

1. Expand access to methadone and suboxone/buprenorphine MAT
2. Reduce misuse by reducing access – Prescriber report card to create social norms, reduce diversions through drop-box programs, and educate prescribers on the Prescription Drug Monitoring Program
3. Community based services that connect individuals with peer supports
4. Increase use of Naloxone – Making it easier for emergency responders to have access

21st Century Cures Act



- A “Christmas Miracle”
- Sen. Alexander
(R- Tenn.)
- Seen by some as a gift
to Big Pharma
- Bipartisan, sweeping
approval within House
and Senate

21st Century Cures Act

- \$1 billion available to states for opioid abuse prevention and treatment programs
 - April 2017, Secretary Tom Price announced \$485 in grants for States and territories
- \$1.6 billion for brain diseases, including Alzheimer's
- \$1.8 billion for Cancer Moonshot
- \$500 million for FDA

21st Century Cures Act

- Strengthen leadership and accountability
 - Administrator of SAMHSA is now the Assistant Secretary for Mental Health and Substance Use
 - SAMSHA will have a Chief Medical Officer
 - Serious Mental Illness Committee
 - SAMSHA is to publish a strategic plan, which will include improving quality of mental health and SUD services and increasing access in rural areas
- Substance abuse is now called a substance use disorder (SUD)

21st Century Cures Act

- Clarifying HIPAA permissions...
 - Recognition that there is confusion nationwide about what can be communicated to family members
 - By 12/13/2017, guidance to be issued, training materials to be developed
 - By early 2018, HHS Secretary must convene stakeholders to discuss effect of revised 45 CFR Part 2

21st Century Cures Act

- Promote access to mental health and SUD care
- Create and maintain real-time state databases of beds
- Assist with transitioning out of homelessness
- Adult suicide prevention and intervention programs
- Pediatric underage drinking

Veterans

- Suicide initiatives
 - 20 suicides per day, prevention is top clinical priority
- Expansion of emergency mental health services to OTH veterans
 - effective 7/5/17
- Telemental health services (since 2003)
- RxP (since 1999)

Volk v. DeMeerleer, 187 Wn.2d 241, 386 P.3d 254 (2016).

- Washington Supreme Court case.
- Double murder-suicide in July 2010.
 - Patient had received outpatient treatment for mental health issues with the same psychiatrist for years.
 - Patient killed his former girlfriend and one of her children, and attacked another of her children with a knife.
 - Patient had last seen his psychiatrist three months before the killings.
 - He reported having suicidal thoughts when depressed, but had not expressed a specific intention to harm anyone.

Volk v. DeMeerleer – Holding

- The Washington Supreme Court ruled that a psychiatrist could be liable for homicides and other violent acts committed by a patient, even though he had never identified the victims as targets of violence.
 - The relationship between a mental health professional and a patient creates a duty to “take reasonable precautions to protect *anyone* who might foreseeably be endangered by” the patient’s condition.
 - Whether the patient’s “actions were foreseeable...is a question of fact that should have been resolved by a jury.”

Idaho – Duty to Warn & Immunity

- Mandatory duty to warn law
 - Idaho Code sections 6-1902 and 6-1903
 - Duty to warn arises when a patient has communicated an **explicit threat** of imminent serious physical harm or death, to a **clearly identified or identifiable** victim or victims, and the patient has the apparent intent and ability to carry out such a threat.
 - The mental health professional must make a reasonable effort, in a timely manner, to communicate the threat **both to the victim and to law enforcement** closest to the patient's or victim's residence.
- Immunity law for mental health professionals
 - Idaho Code section 6-1904
 - Creates immunity for mental health professionals who warn and for those who do not warn.
 - A professional who warns about a patient's threats when there is a reasonable basis to do so has immunity.
 - A professional who fails to predict or take precautions to prevent a patient's violent behavior when there is no specific threat, also has immunity.

Caldwell v. Idaho Youth Ranch, Inc., 132 Idaho 120, 968 P.2d 215 (1998).

- Former resident committed a murder three months after his release.
- Established a “highly predictable” test.
 - Court held that in order for the plaintiff to recover, it was necessary “for claimants to demonstrate that the harmful behavior should have been **highly predictable** based upon demonstrated past conduct.”
- After *Caldwell*, if the patient’s harmful behavior is **highly predictable** to occur based on prior demonstrated conduct, violent actions are foreseeable and the professional can be held liable for the violent acts committed by the patient.

Questions?





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