

CHAPTER 86
FORMERLY
SENATE BILL NO. 13
AS AMENDED BY
SENATE AMENDMENT NO. 4

AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE RELATING TO STERILE NEEDLE AND SYRINGE EXCHANGE.

WHEREAS, AIDS/HIV is an epidemic in Delaware, with the First State ranking – consistently among the top ten annually in the rate of new HIV cases - on a per capita basis; and

WHEREAS, Delaware’s AIDS prevalence rate is 36% greater than the U.S. rate; and

WHEREAS, the frequency with which new AIDS cases are diagnosed in Delaware is increasing, from 10th in 2006 to 7th in 2007; and

WHEREAS, Delawareans aged - 30-49 comprise 70% of reported HIV/AIDS cases in DE through 2009; and

WHEREAS, 70% of those living with HIV/AIDS in Delaware reside in New Castle County, 12% reside in Kent County, and 18% reside in Sussex County; and

WHEREAS, in recent years, the geographic dispersion of new HIV cases have shifted to reflect a greater percentage of new cases in smaller concentrations within an increased number of rural and suburban areas throughout the state; and

WHEREAS, the AIDS/HIV epidemic crosses all racial, ethnic, geographical and socio-economic boundaries within the State of Delaware; and

WHEREAS, females in Delaware continue to account for a growing percentage of HIV/AIDS cases diagnosed each year in Delaware, representing 33% of new infections between 2000 and 2009; and

WHEREAS, between 1996-2008 injection drug use - represented 33% of new infections, down from nearly half from 1981-1995; and

WHEREAS, in 2006, the state of Delaware approved implementation of a five-year needled exchange pilot program, based on the premises that no evidence –had ever been found to show that needle exchange programs promoted drug use; that numerous federal government studies had demonstrated that the rate of new HIV cases caused by injection drug use could be cut by 30% using needle exchange programs; that needle exchange programs had become part of a larger AIDS prevention strategy by providing HIV testing, health counseling, information on the dangers of contracting AIDS by engaging in high risk behaviors, and the importance of protecting oneself from HIV infection; that needle exchange programs had proven not to increase the number of needles in the community and could even potentially reduce the number of discarded needles on the streets; and that needle exchange programs had been endorsed by numerous medical and other prominent organizations, including the American Medical Association, the American Academy of Pediatrics, the US Conference of Mayors, the National Association of State Alcohol and Drug Abuse Directors, the World Health Organization, the American Pharmaceutical Association, the National Association of Board of Pharmacy, the Association of State and Territorial Health Officials, the National Alliance of State and Territorial AIDS Directors, and the National Association of Social Workers; and

WHEREAS, Delaware’s pilot needle exchange program has proven successful in meeting and exceeding goals established within the program’s Implementation Plan, including those associated with the provision of rapid HIV testing to clients and community members, enrolling newly-diagnosed HIV positive persons into medical care, reconnecting clients to medical care, enrolling clients into substance abuse programs, and the reduction of needle sharing.

NOW THEREFORE:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 79, Title 29, Delaware Code by deleting Subchapter VIII in its entirety and substituting in lieu thereof the following:

“SUBCHAPTER VIII. STERILE NEEDLE AND SYRINGE EXCHANGE PROGRAM FOR THE PREVENTION OF AIDS AND OTHER DISEASES.

§7990. Definitions.

As used in this subchapter:

1. ‘Division’ means the State Division of Public Health within the Department of Health and Social Services of the State of Delaware.
2. ‘Director’ means the Director of the State Division of Public Health.

3. 'Participant' means an injection drug user who exchanges a sterile needle and syringe unit pursuant to the program established in Section 7991 of this Subchapter.

4. 'HIV' means the Human Immunodeficiency Virus that causes Acquired Immune Deficiency Syndrome (AIDS).

§7991. Establishment of Program.

The Director of the State Division of Public Health shall maintain a sterile needle and syringe exchange program. The program shall be administered by the Director or the Director's designees. The Director is authorized to designate private providers of services to operate the program.

§7992. Operation of the Program.

The Program shall:

a) Operate for the purposes of: (1) Preventing the transmission of HIV, the Hepatitis B virus, and other blood borne diseases; and (2) providing injection drug users with referrals to appropriate treatment and other health and social services programs.

b) Provide for a 1-for-1 exchange, whereby participants shall receive 1 sterile needle and syringe unit in exchange for each used one.

c) Be designed to prevent non-injection drug users from participating in the program.

d) Be designed and maintained to provide maximum security of exchange sites and equipment, including security measures that shall be required to allow for: identification of program needles; a full accounting of the number of needles distributed; the number in storage; safe disposal of returned needles, and any other measures that may be required to control the use and dispersal of sterile needles and syringes, provided however that a participant may exchange used needles and syringes at any exchange site if more than one site is available.

e) Include appropriate levels of staff expertise in working with injecting drug users and adequate staff training in providing community referrals, counseling, and preventive education.

f) Include services to: 1) Educate the participants about the dangers of contracting HIV or Hepatitis viruses through needle-sharing practices and unsafe sexual behaviors; 2) provide HIV testing; 3) provide a linkage for referrals to drug counseling and treatment services, and follow-up to those referrals to assure that participants receive available treatment.

g) Establish procedures for identifying participants consistent with the confidentiality provisions of this subchapter.

h) Establish a method of identification and authorization for program staff members who have access to hypodermic needles, syringes, or program records.

i) Program structure and delivery methods will be designed in response to the local community in which the program operates.

(i) Operate exclusively within the City of Wilmington.

§7993. Criminal Liability.

(a) Exchanges under the sterile needle and syringe exchange program shall be exempt from the provisions of Title 16, Sections 4757, 4771, and 4772, for the participant or for the employees of the Division or designated program staff, whenever the possession or distribution of the controlled paraphernalia or hypodermic syringe or needle is a direct result of the employee's or participant's activities in connection with the work of the program authorized under this subchapter.

(b) Notwithstanding the provisions of subsection (a) of this Section, a program staff member or program participant is not immune from criminal prosecution for: 1) the redistribution of hypodermic needles or syringes in any form; 2) any activities not authorized or approved by the program; or 3) violation of laws prohibiting or regulating the use, possession, dispensing, distribution, or promotion of controlled substances.

§7994. Oversight Committee.

The Director shall appoint an Oversight Committee for the program to provide assistance and advice in the oversight of the program. The Committee shall include: one representative of law enforcement, one physician, one injecting drug user or former injecting drug user, and up to two other individuals who the Director determines to be appropriate for appointment; one legislator from the Senate appointed by the President Pro Tem and one legislator from

the House of Representatives appointed by the Speaker of the House; one elected official from the City of Wilmington; and one citizen from the City of Wilmington. The Committee shall meet periodically to monitor the progress and effectiveness of the program and to examine data compiled by the program pursuant to §7995 of this subchapter.

§7995. Data Collection and Program Reports.

The program shall collect the following data for the Director and the Oversight Committee:

- a) Information on the number of participants served and the number of needles and syringes distributed;
- b) A demographic profile of the participants served, including but not limited to: age, sex, ethnicity, area of residence, types of drugs used, length of drug use, and frequency of injection;
- c) The number of participants entering drug counseling and treatment, and the number of referrals made by the program for drug counseling and treatment;
- d) Data on participants regarding HIV testing, counseling, and/or other social services;
- e) Assessment of the impact of the program on needle and syringe sharing and other high risk behaviors;
- f) Impact on the transmission of HIV infection among injection drug users;
- g) Other data as requested by the Director or Oversight Committee to assess the cost effectiveness and strengths and weaknesses of the program.

§7996. Identification of Participants and Confidentiality.

(a) Each program participant shall be issued an identification card with an identification number. The identification number shall be cross-indexed to a confidential record containing pertinent data on the participant.

(b) Information obtained by the program that would identify program participants, including program records is: (1) confidential; (2) not open to public inspection or disclosure; and (3) not discoverable in any criminal or civil proceeding.

(c) Upon the written consent of a program participant, information obtained by the program may be released or disclosed to a person or agency as directed by the participant.

(d) If a program participant raises the issue of participation in the program either as a subject matter or legal defense in an administrative, civil, or criminal proceeding, the program participant waives the confidentiality of identity provided under (a) and (b) of this Section.”

Approved July 05, 2011