

California Department of Public Health, Center for Infectious Diseases, Office of AIDS

Syringe Exchange Program (SEP) Certification Regulations Update

Date: October 15, 2012

The California Department of Public Health (CDPH) is committed to reducing HIV infection among injection drug users, and we are pleased to take up the initiative to authorize syringe exchange programs (SEPs) at the state level. CDPH established a tight timeline to develop regulations for SEP authorization in order to ensure that a program can be started well before the authorizing legislation sunsets in 2019.

The development of regulations in order to administer the SEP authorization initiative outlined by AB 604 is a top priority for CDPH. We have expedited all processes within the control of CDPH which includes the completion of all documents required for the regulations within the first year of the timeline we provided to your office in December, 2011. The other two years included in the time estimate we provided are determined by the Administrative Procedures Act which includes public comment periods and approvals by the California Health and Human Services (HHS) Agency, Department of Finance (DOF), and Office of Administrative Law.

OA has completed the regulation package according to the action plan developed in collaboration with CDPH's OOR. The package consists of four components: 1) the regulation text; 2) the Initial Statement of Reasons; 3) the Economic and Fiscal Impact Statement; and 4) the Informative Digest. The package was completed four months ahead of schedule: it is currently under internal review.

Following review, CDPH is required by law to submit the proposed regulations for a 45-day public comment period which may include a public hearing, evaluate public comments, and amend the regulations, if necessary. Significant amendments require additional 15-day public comment periods on the regulations. When no other amendments are made to the proposed regulations, CDPH will submit the regulation package to the Office of Administrative Law for review. While awaiting final approval of the package, OA will prepare for implementation so that the project is ready to launch quickly following approval.

In addition to developing the regulation package, OA also held a meeting on April 30 with law enforcement organizations that registered opposition to AB 604. Although OA is not permitted to share drafts of the regulations prior to the public comment period, OA was able to discuss the key objectives the regulations would be designed to address. OA also held a meeting with SEPs and public health practitioners interested in SEPs; notes from both those meetings are attached.

**Office of AIDS
Center for Infectious Diseases
California Department of Public Health (CDPH)
Minutes from a Meeting with Law Enforcement Association Representatives
on CDPH Syringe Exchange Program Certification**

April 30, 2012

Attendees:

California Department of Public Health (CDPH): Dr. Ron Chapman, Director, CDPH; Dr. Gil Chavez, Deputy Director, Center for Infectious Diseases (CID); Drew Johnson, Assistant Deputy Director, CID; Dr. Karen Mark, Interim Chief, Office of AIDS (OA); Alessandra Ross, Injection Drug Use Specialist, OA; Theresa Harlan, Legislative and Policy Specialist, OA; and Daniel Coronado, Division Program Analyst, OA.

Law Enforcement Associations: Reggie Davis, Chief Probation Officers of California, California Association of Probation Services Administrators (CAPSA); Mike Dent, CAPSA; John Lovell, California Narcotic Officers' Association, California Police Chiefs Association.

Dr. Chapman and Dr. Mark provided an overview of the purpose of the meeting, which was to solicit input into the implementation of Assembly Bill (AB) 604 (Skinner, Chapter 744, Statutes of 2011). The new law permits OA to establish a process through which qualified California agencies may apply directly to OA for authorization to provide syringe exchange services. OA will term this process syringe exchange program (SEP) "certification" to distinguish it from SEP authorization by local California governments, which will continue and will be unaffected by the proposed regulations.

Alessandra Ross provided an overview of the provisions of AB 604 and Governor Edmund G. Brown's signing message, which together provide the framework for the regulations that will be developed. The overview included a review of California SEPs: currently, there are 37 SEPs in the state. Most are not stand-alone programs, but are services provided by larger agencies that are already serving injection drug users (IDUs) in their own neighborhoods. These agencies include a range of organizations, from drug treatment programs to AIDS service organizations to churches. AB 604 restricts potential applicants to those agencies that are already providing specified services to IDUs.

The overview also included a review of other relevant laws, and Mr. Lovell raised the point that the California Narcotics Officers' Association was one of the sponsors of a 2005 bill to simplify the process of local SEP authorization.

Summary of Discussion

Key questions addressed:

- **What are the primary concerns law enforcement representatives have regarding OA authorization of syringe exchange services?**

- Law enforcement organizations represented were concerned that programs will be approved without regard to preventing over-concentration of SEPs in fragile neighborhoods. Zoning regulations were specified as a concern.

OA discussed addressing these by:

- Requiring applicant organizations to be in compliance with all local laws and ordinances, including but not limited to zoning laws; and
 - Requiring applicant organizations to document whether or not syringe exchange services are already being provided in the area of the suggested location.
- **AB 604 requires OA to consult with local law enforcement, but does not specify the contents of the consultation. How can this consultation be best conducted to solicit input from law enforcement they consider most useful?**
 - Mr. Lovell underscored the point that OA is not a local decision maker, and it is important that OA develop a method of ascertaining and addressing the needs and concerns of the communities that will be home to SEPs.
 - Mr. Lovell suggested that consultation with local law enforcement can take place over the phone with a chief, press contact, or crime prevention analyst. In order for this to be successful, there needs to be an effort to prepare law enforcement to comment on the applicant.
 - The lack of in-person meetings for neighborhood residents is of concern to law enforcement, especially if some or most of those residents have limited access to the Internet to participate in the public comment period required by the legislation. Mr. Lovell suggested that OA require applicants to host community meetings in their local areas as a prerequisite to certification.

Note: Subsequent to this meeting, CDPH determined that if OA were to require applicant organizations to host community meetings it would be outside of the scope of what the law permits. OA will continue with the plan described in the meeting to encourage public participation in the online public comment period. OA will also consult with affected local neighborhood associations and will provide them with information they need to encourage additional participation in the online public comment period.

Additional Discussion

Meeting participants also discussed requests that were made by the California Police Chiefs Association, the California Narcotic Officers Association, and the International Faith Based Coalition at a December 14, 2011 meeting with the Governor's Office, CDPH, and representatives of the sponsors of AB 604. CDPH cannot create additional requirements that AB 604 does not authorize. However, OA can and will:

- Consult with the local health officer, local law enforcement, and the affected neighborhood association to solicit feedback on the application. OA will also post applicant information online and will receive online public comment for a 90-day period.
- Implement technology, such as a web feed, that allows anyone in the state to be alerted to new postings of applications.
- Include text in its proposed regulations that provides that CDPH may revoke any certification for violation of applicable regulations, ordinances, and laws.

Office of AIDS (OA), California Department of Public Health (CDPH)
Minutes from a Meeting with Syringe Exchange Providers and Local Public Health
Providers on CDPH Syringe Exchange Program (SEP) Certification
June 26, 2012

Attendees:

California Department of Public Health (CDPH): Alessandra Ross, Injection Drug Use Specialist, OA; Theresa Harlan, Legislative and Policy Specialist, OA; and Matthew Willis, Operations Advisor, OA.

Syringe Exchange Providers and Public Health Practitioners: Dennis Hendrix, Kern County; Jeffrey Goodman, Los Angeles County; Lynn Campanario, Sonoma County; Dallas Blanchard, Fresno County; Cheryl Barrit, Long Beach; Hilary McQuie, Alameda County; Jason Wise, Los Angeles County; Peter Simpson, Sacramento County; Rachel Anderson, Sacramento County.

Alessandra Ross provided an overview of the provisions of AB 604 and Governor Edmund G. Brown's signing message, which together provide the framework for the regulations that will be developed. The overview included a review of other laws relevant to syringe exchange and to organizations working with injection drug users, including Senate Bill 41 (Yee, Statutes of 2011).

Summary of Discussion

Key question: What are the primary concerns syringe exchange providers and local public health practitioners have regarding OA authorization of syringe exchange services?

- Organizations represented were concerned that OA would create requirements for SEP operation that were restrictive and not in keeping with established best practices, such as requiring that all syringe exchanges follow a one-for-one exchange policy.

OA explained that we intend to develop regulations in accordance with established best practices, including the recommendations from the U.S. Public Health Service. These recommendations state that injection drug users should use a new, sterile needle and syringe for each injection, and these guidelines have been used as the framework for SEP-related regulations in other states.

- OA presented best practice recommendations for SEPs that were developed in 2009 by the Substance Use/Injection Drug Use Task Force of OA's California HIV/AIDS Planning Group in order to solicit feedback as to whether or not they could serve to inform the development of the regulations. Meeting participants had no criticisms of the best practice recommendations. Only one suggestion was made, that as part of their report back to OA, SEPs submit a community relations plan that (1) records adverse incidents **and positive interactions** between local law enforcement and SEP staff, volunteers or participants, and (2) documents concerns **and positive feedback** expressed by program participants, community members, neighborhood associations and/or local law enforcement officials.

OA accepted this suggestion and included it in the draft regulations.