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HOUSE BILL 52

55TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2022

INTRODUCED BY

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AN ACT

RELATING TO HEALTH; AMENDING THE HARM REDUCTION ACT TO EXPAND
SUPPLIES OR DEVICES PROVIDED TO HARM REDUCTION PROGRAM
PARTICIPANTS; PROVIDING THAT POSSESSION OF CERTAIN SUPPLIES OR
DEVICES IS NOT A VIOLATION OF THE CONTROLLED SUBSTANCES ACT;
ADJUSTING THE DEPARTMENT OF HEALTH AND ADVISORY COMMITTEE
DUTIES PERTAINING TO THE HARM REDUCTION PROGRAM; ADJUSTING
ADVISORY COMMITTEE MEMBERSHIP; REPEALING SECTIONS 24-2C-2 AND
24-2C-6 NMSA 1978 (BEING LAWS 1997, CHAPTER 256, SECTIONS 2 AND
6).

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 24-2C-3 NMSA 1978 (being Laws 1997,
Chapter 256, Section 3) is amended to read:

"24-2C-3. DEFINITIONS.--As used in the Harm Reduction
Act:

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1 A. "department" means the department of health; and

2 B. "participant" [~~or "client"~~] means [~~an~~
3 ~~intravenous drug user who exchanges a used hypodermic syringe,~~
4 ~~needle or other object used to inject controlled substances or~~
5 ~~controlled substance analogs into the human body for a sterile~~
6 ~~hypodermic syringe and needle in compliance with the procedures~~
7 ~~of the program; and~~

8 C. ~~"program" means a harm reduction program for the~~
9 ~~purpose of sterile hypodermic syringe and needle exchange] a~~
10 person who receives supplies or devices or services provided by
11 the harm reduction program."

12 SECTION 2. Section 24-2C-4 NMSA 1978 (being Laws 1997,
13 Chapter 256, Section 4) is amended to read:

14 "24-2C-4. HARM REDUCTION PROGRAM CREATED--DEPARTMENT
15 RESPONSIBILITIES.--

16 A. The department shall:

17 (1) establish and administer a [~~harm~~
18 ~~reduction~~] program [~~for the purpose of sterile hypodermic~~
19 ~~syringe and needle exchange~~] that shall be known as the "harm
20 reduction program" to reduce overdose mortality and other
21 negative health outcomes associated with drug use;

22 (2) pursuant to rules established by the
23 department, qualify persons as harm reduction program
24 participants, issue a document that identifies the bearer of
25 the document as a participant and provide the bearer of the

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1 document with access to supplies, devices or services provided
2 by the program;

3 [~~(2)~~] (3) compile data to assist in planning
4 and evaluating efforts to combat [~~the spread of blood borne~~
5 ~~diseases~~] overdose mortality and other negative health outcomes
6 associated with drug use; and

7 [~~(3)~~] (4) make an annual report, including
8 legislative recommendations, to the legislative health and
9 human services committee by October 1 each year.

10 B. [~~Within thirty days of the effective date of the~~
11 ~~Harm Reduction Act~~] The department shall appoint an advisory
12 committee to include representation from:

13 (1) the office of the attorney general;

14 (2) the New Mexico state police division of
15 the department of public safety;

16 (3) the [~~human immunodeficiency virus sexually~~
17 ~~transmitted disease~~] infectious disease prevention and control
18 bureau of the department;

19 (4) the director of the epidemiology and
20 response division of the department or [~~his~~] the director's
21 designee;

22 (5) a medical officer of the public health
23 division of the department; and

24 (6) other persons or representatives as chosen
25 by the secretary of health to ensure a thorough and unbiased

1 evaluation of the program established under the Harm Reduction
2 Act.

3 C. The advisory committee shall:

4 (1) develop policies and procedures for
5 evaluation of the harm reduction program;

6 (2) develop criteria for data collection and
7 program evaluation; and

8 (3) meet as necessary to monitor and analyze
9 data [~~and monitor~~] and produce a report on the harm reduction
10 [~~program~~] program's impact on overdose mortality and other
11 negative health outcomes associated with drug use.

12 D. The department may contract with private
13 providers to operate the harm reduction program.

14 E. The department shall promulgate rules as
15 necessary for the administration of the Harm Reduction Act,
16 including developing criteria for the types of supplies or
17 devices provided pursuant to the harm reduction program and
18 standards for distribution of those supplies or devices through
19 that program. The criteria and standards shall be developed to
20 provide supplies and devices in order to reduce:

21 (1) cases of negative health outcomes
22 associated with drug use, such as overdoses or the spread of
23 infectious disease; and

24 (2) harm by promoting reduced use of non-
25 sterile items and improving participant engagement in harm

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1 reduction services and prevention education."

2 SECTION 3. Section 24-2C-5 NMSA 1978 (being Laws 1997,
3 Chapter 256, Section 5) is amended to read:

4 "24-2C-5. PROGRAM.--The harm reduction program shall
5 provide participants with:

6 A. sterile hypodermic syringes and needles in
7 exchange for used hypodermic syringes, needles or other objects
8 used to inject controlled substances or controlled substance
9 analogs into the human body;

10 B. other objects used to prepare or consume
11 controlled substances or controlled substance analogs;

12 C. supplies or devices used for testing controlled
13 substances or controlled substance analogs for potentially
14 dangerous adulterants;

15 D. supplies or devices approved by the department
16 for distribution in accordance with rules established pursuant
17 to Subsection E of Section 24-2C-4 NMSA 1978;

18 ~~[B.]~~ E. education ~~[to participants]~~ on the
19 prevention of:

20 (1) the transmission of the human
21 immunodeficiency virus and hepatitis B and C ~~[and prevention~~
22 ~~measures]~~; and

23 (2) drug overdose mortality and other negative
24 health outcomes; and

25 ~~[G.]~~ F. referral to substance abuse treatment

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1 services [~~for participants~~]."

2 SECTION 4. Section 30-31-25.1 NMSA 1978 (being Laws 1981,
3 Chapter 31, Section 2, as amended) is amended to read:

4 "30-31-25.1. POSSESSION, DELIVERY OR MANUFACTURE OF DRUG
5 PARAPHERNALIA PROHIBITED--EXCEPTIONS.--

6 A. It is unlawful for a person to use or possess
7 with intent to use drug paraphernalia to plant, propagate,
8 cultivate, grow, harvest, manufacture, compound, convert,
9 produce, process, prepare, test, analyze, pack, repack, store,
10 contain, conceal, inject, ingest, inhale or otherwise introduce
11 into the human body a controlled substance in violation of the
12 Controlled Substances Act. The provisions of this subsection
13 do not apply to a person who is in possession of:

14 (1) hypodermic syringes or needles [~~at the~~
15 ~~time the person is directly and immediately engaged in a harm~~
16 ~~reduction program, as provided in the]~~ for the purpose of
17 participation in or administration of the Harm Reduction Act;

18 (2) supplies or devices obtained pursuant to
19 the Harm Reduction Act in accordance with rules established by
20 the department of health for the harm reduction program; or

21 (3) supplies or devices used for the testing
22 of controlled substances or controlled substance analogs for
23 dangerous adulterants.

24 B. It is unlawful for a person to deliver, possess
25 with intent to deliver or manufacture with the intent to

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1 deliver drug paraphernalia with knowledge, or under
2 circumstances where one reasonably should know, that it will be
3 used to plant, propagate, cultivate, grow, harvest,
4 manufacture, compound, convert, produce, process, prepare,
5 test, analyze, pack, repack, store, contain, conceal, inject,
6 ingest, inhale or otherwise introduce into the human body a
7 controlled substance in violation of the Controlled Substances
8 Act. The provisions of this subsection do not apply to:

9 (1) department of health employees or their
10 designees while they are directly and immediately engaged in
11 activities related to the harm reduction program authorized by
12 the Harm Reduction Act; or

13 (2) the sale or distribution of hypodermic
14 syringes and needles by pharmacists licensed pursuant to the
15 Pharmacy Act.

16 C. A person who violates the provisions of
17 Subsection A of this section shall be issued a penalty
18 assessment pursuant to Section [~~3 of this 2019 act~~] 31-19A-1
19 NMSA 1978 and is subject to a fine of fifty dollars (\$50.00).
20 A person who violates the provisions of Subsection B of this
21 section is guilty of a misdemeanor.

22 D. A person eighteen years of age or over who
23 violates the provisions of Subsection B of this section by
24 delivering drug paraphernalia to a person under eighteen years
25 of age and who is at least three years the person's junior is

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1 guilty of a fourth degree felony and shall be sentenced
2 pursuant to the provisions of Section 31-18-15 NMSA 1978."

3 SECTION 5. REPEAL.--Sections 24-2C-2 and 24-2C-6 NMSA
4 1978 (being Laws 1997, Chapter 256, Sections 2 and 6) are
5 repealed.

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