

State Approaches to Expanded Access to Sterile Syringes Through Pharmacies

I. Goal: Expanded Access to Sterile Syringes

Three Strategies

- Pharmacy Access

Use existing retail distribution systems to expand syringe access

- Syringe Exchange

- Physician Prescription

II. State Level Legal Barriers to Syringe Access through Pharmacies

- Drug Paraphernalia Laws
- Syringe Prescription Laws
- Pharmacy Regulations

Drug Paraphernalia Laws

49 states and DC have drug paraphernalia laws

- These laws are an important contributing cause of unsterile injection because most restrict furnishing and possession of syringes
- Most criminalize both manufacturing/distributing and possessing of drug paraphernalia
- Most state statutes based on model law aimed at regulating the growth of headshops and were passed in the 1970s and 80s:

From model drug paraphernalia act drafted by US Department of Justice:

unlawful “[t]o use, or to possess with intent to use, drug paraphernalia to....introduce into the human body a controlled substance in violation” of controlled substance laws.

- These are misdemeanor infractions in most states, but felonies in some states

16 states have provisions in their drug paraphernalia laws that make them less of a barrier to syringe access

- Four states exclude syringes categorically from paraphernalia laws
- Four states exclude syringes from paraphernalia laws when sold in amounts of ten and under
- Six states offer immunity in their paraphernalia laws to pharmacists who knowingly sell to IDUs
- New Mexico allows the sale and distribution of an unlimited number of needles by licensed pharmacists
- South Carolina has no reference to syringes or injection in its paraphernalia laws

Syringe Prescription Laws

13 states have syringe prescription laws

- Seven states have syringe prescription laws that are a limited barrier to syringe access
 - Four states allow sale of ten or fewer syringes without a prescription:
 - Connecticut
 - Maine
 - New York
 - New Hampshire
 - Three others have limited scope:
 - Florida - prescription required only for sale to minors

- Virginia- prescription required for children under 16 years old
- Nevada - prescription required except for insulin, asthma, and other specified uses (large loophole)
- Six states have syringe prescription laws that are a significant barrier to syringe access
 - California
 - Delaware
 - Illinois
 - Massachusetts
 - New Jersey
 - Pennsylvania

Pharmacy Regulations

- Pharmacy regulations are state legal requirements that govern the work of pharmacists
- 23 states have some sort of regulation pertaining to syringe sales
- Regulations in three areas have an impact on syringe availability:
 1. “Sub-prescription” controls require pharmacists to decide who should be allowed to purchase a syringe
 2. Record-keeping requirements may require pharmacist to record name and address of purchaser, date of purchase, and quantity purchased
 3. Disposal and information requirements may make retailers less willing to sell needles

- In addition, states without explicit regulations may have “unprofessional conduct” regulations and pharmacist knowledge, attitudes and beliefs that are a deterrent to syringe access

III. Changes in State Prescription and Paraphernalia Laws

Some states have made changes to their syringe prescription and drug paraphernalia laws in ways that have increased access to sterile syringes

Oregon

1987 – Passed paraphernalia law but explicitly excluded syringes

Wisconsin

1989 – Excluded syringes from roster of drug paraphernalia

Connecticut

1992 – Modified existing syringe prescription law to allow purchase of ten or fewer syringes without a prescription

Amended paraphernalia law to exclude hypodermic syringes and needles sold or possessed in amounts of ten or fewer

1999 – Possession limit raised to 30

Maine

1993 – Removed prescription requirement for syringe sales

1997 – Removed criminal penalties from paraphernalia law for possession of ten or fewer syringes

Minnesota

1997 – Amended paraphernalia and prescription laws to allow pharmacy sale of up to 10 syringes without a prescription and the possession of up to 10 unused syringes

New Hampshire

2000 – Amended syringe prescription law to allow purchase of ten or fewer needles in a pharmacy without a prescription

Removed syringes from inclusion in the drug paraphernalia act by removing references to injecting

Requires pharmacists to provide purchasers with information on safe disposal of syringes and needles

New York

2000 – Changed Public Health Law to authorize a demonstration program to expand access to sterile hypodermic needles and syringes

The Expanded Syringe Access Demonstration Program (ESAP) is effective 1/1/2000-3/31/2003

Pharmacies, health care facilities and health care practitioners who can otherwise prescribe needles or syringes may register with the state health department to sell or furnish up to ten syringes to persons 18 or older without a prescription

Persons 18 or older may legally obtain and possess syringes through ESAP without a prescription

Registered providers must cooperate in a program to assure safe disposal of used needles and syringes and all needles and syringes provided must be accompanied by a safety insert that includes information on how to access drug treatment and information about HIV/AIDS

An independent evaluation will be conducted in consultation with the AIDS Advisory Council

and submitted by 1/15/2003

Rhode Island

2000 – Repealed syringe prescription law

Amended paraphernalia law to exclude syringes as a disease prevention measure and eliminated all criminal penalties for syringe possession

Pharmacists required to provide purchasers with information on drug treatment, HIV prevention, and safe disposal practices

New Mexico

2001 – Made an exception to its paraphernalia law to allow the sale and distribution of an unlimited number of needles by licensed pharmacists

Activities in Other States

Illinois

2001 – Attempting to change syringe prescription law

- Legislation lost by one vote in Senate
- Continuing reform efforts in hopes of legislation being acted on later this year or next year
- Formed Illinois Coalition for Responsible Syringe Policy, built support for change among 100 groups including:
 - Illinois State Medical Society
 - Illinois Public Health Association
 - Illinois Pharmacist Association
 - Walgreens

California

2001 – Legislation (A.B. 1292) pending to repeal prescription requirements for the furnishing or sale of syringes and allow licensed pharmacists to sell syringes; also requires that pharmacists provide to each purchaser information regarding safe disposal and allows pharmacists to provide information about drug addiction, including how to access treatment, and the prevention and treatment of HIV and hepatitis

- Formed Californians for Responsible Syringe Policy; members include:
 - Major medical and public health groups
 - HIV and drug treatment advocates
 - California Retailers Association
 - California Pharmacy Association
 - Walgreens

- Action in 2001 postponed to allow Coalition time to educate lawmakers and the governor; working towards committee consideration in Jan 2002

Massachusetts

2001 – Legislation pending to deregulate the sale and possession of hypodermic needles and syringes, allowing them to be sold by licensed pharmacists to adults 18 and over; requires an educational insert be given with each sale and preserves state Department of Public Health's authority to implement clean needle exchange programs

IV. Taking Action at the State Level

1. Determine current status of your state syringe prescription, drug paraphernalia, and pharmacy regulations and their impact on syringe access
2. Determine appropriate legislative or other public policy remedies
3. Determine position of state board of pharmacy and educate if not supportive of necessary changes

In 1999 American Pharmaceutical Association urged:

“boards of pharmacy to revise laws and regulations to permit the unrestricted sale or distribution of sterile syringes...to decrease the transmission of blood-borne diseases.”

4. Build support and coalitions among likely allies. Potential partners include:

- medical society
- public health association
- bar association
- law enforcement officials

5. National associations may be able to provide guidance and training for state affiliates; major national groups have endorsed expanded access:

- American Medical Association
- American Pharmaceutical Association
- Association of State and Territorial Health Officials
- National Alliance of State and Territorial AIDS Directors
- National Association of Boards of Pharmacy

6. Identify/educate potential legislative allies

7. Educate grassroots and build support