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:

.221550.3SA
A. "department" means the department of health; and

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

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

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

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

A. The department shall:

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

(2) pursuant to rules established by the department, qualify persons as harm reduction program participants, issue a document that identifies the bearer of the document as a participant and provide the bearer of the
document with access to supplies, devices or services provided by the program;

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

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

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

(1) the office of the attorney general;

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

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

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

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

(6) other persons or representatives as chosen by the secretary of health to ensure a thorough and unbiased
evaluation of the program established under the Harm Reduction Act.

C. The advisory committee shall:

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

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

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

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

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

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

(2) harm by promoting reduced use of non-sterile items and improving participant engagement in harm
reduction services and prevention education."

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

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

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

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

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

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

[E.] education [to participants] on the prevention of:

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

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

[F.] referral to substance abuse treatment
services [for participants]."

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

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

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

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

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

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

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

1. department of health employees or their designees while they are directly and immediately engaged in activities related to the harm reduction program authorized by the Harm Reduction Act; or
2. the sale or distribution of hypodermic syringes and needles by pharmacists licensed pursuant to the Pharmacy Act.

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

D. A person eighteen years of age or over who violates the provisions of Subsection B of this section by delivering drug paraphernalia to a person under eighteen years of age and who is at least three years the person's junior is
guilty of a fourth degree felony and shall be sentenced
pursuant to the provisions of Section 31-18-15 NMSA 1978."

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

- 8 -