

CHAPTER 396

AN ACT concerning harm reduction services and supplementing and amending P.L.2006, c.99.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

C.26:5C-26.1 Definitions.

1. As used in P.L.2006, c.99 (C.26:5C-25 et al.):

“Authorized harm reduction services” means a suite of harm reduction services, approved by the Department of Health and provided in a manner that is consistent with State and federal law, which services shall include, but shall not be limited to: syringe access, syringe disposal, referrals to health and social services, harm reduction counseling and supplies including, but not limited to, fentanyl test strips, and HIV and hepatitis C testing.

“Eligible entity” means a federally qualified health center, a public health agency, a substance abuse treatment program, an AIDS service organization, or another entity with the capacity to provide harm reduction services as determined by the Department of Health.

“Harm reduction supplies” means any materials or equipment designed to identify or analyze the presence, strength, effectiveness, or purity of controlled dangerous substances or controlled substance analogs, including, but not limited to, fentanyl test strips; opioid antidotes and associated supplies; and any other materials or equipment that may be used to prevent, reduce or mitigate the harms of disease transmission, overdose, and other harms associated with personal drug use as are designated through rules prescribed by the Commissioners of Health or Human Services.

2. Section 2 of P.L.2006, c.99 (C.26:5C-26) is amended to read as follows:

C.26:5C-26 Findings, declarations relative to harm reduction programs.

2. The Legislature finds and declares that:

a. Injection drug use is one of the most common methods of transmission of HIV, hepatitis C, and other bloodborne pathogens;

b. (deleted by amendment, P.L.2021, c.396)

c. More than a million people in the United States use drugs at a cost to society in health care, lost productivity, accidents, and crime of more than \$50 billion annually;

d. Harm reduction services have been proven effective in reducing the spread of HIV, hepatitis C, and other bloodborne pathogens, and in reducing overdoses and overdose deaths without increasing rates of substance use or causing other adverse social impacts;

e. Every scientific, medical, and professional agency or organization that has studied this issue, including the federal Centers for Disease Control and Prevention, the American Medical Association, the American Public Health Association, the National Academy of Sciences, the National Institutes of Health Consensus Panel, the American Academy of Pediatrics, and the United States Conference of Mayors, has found harm reduction services to be effective in reducing the transmission of HIV;

f. Harm reduction programs are designed to prevent the spread of HIV, hepatitis C, and other bloodborne pathogens, prevent overdoses and overdose deaths, and to provide a bridge to substance use disorder treatment, healthcare services, and social support services sought out by persons who use drugs intravenously; and it is in the public interest that such services be provided in this State in accordance with statutory guidelines designed to ensure the safety of

consumers who use these programs, the health care workers who operate them, and the members of the general public;

g. Despite the attention that substance use disorders and overdose deaths are receiving Statewide, the number of overdose deaths in New Jersey has remained unacceptably high, with 2,914 confirmed overdose deaths in 2019, and over 70,000 overdose deaths nationwide;

h. The COVID-19 pandemic has increased the urgency of maintaining and expanding harm reduction services. Now more than ever, harm reduction expansion is critical. According to the federal Centers for Disease Control and Prevention's June 24-30, 2020 Morbidity and Mortality Weekly Report, 13 percent of U.S. residents began substance use or increased substance use during the pandemic. New Jersey has already started to see the consequences of the intersecting opioid and COVID-19 crises. There were 3,046 suspected overdose deaths in 2020. If confirmed, this will be New Jersey's highest drug-related fatality count in the past decade;

i. The opioid epidemic is part of a syndemic and is associated with increased rates of HIV and viral hepatitis infection, as well as other social complexities;

j. New Jersey enacted the "Bloodborne Disease Harm Reduction Act" P.L.2006, c.99 (C.26:5C-25 et al.) in 2006 to allow for the establishment of sterile syringe access programs. There are currently seven such programs operating throughout the State, which shall hereafter be referred to as harm reduction services;

k. The federal Centers for Disease Control and Prevention describe harm reduction services as an effective component of a comprehensive and integrated approach to HIV prevention. Such services include providing consumers with sterile syringes, fentanyl test strips, resources for critical services such as HIV care, treatment, pre- and post-exposure prophylaxis services, screening for other sexually transmitted diseases, hepatitis C testing and treatment, hepatitis A and B vaccinations, and other medical, social, and mental health services. In addition, harm reduction services include education concerning safe injection practices, wound care, and overdose prevention;

l. The U.S. Department of Health and Human Services has stated that there is conclusive scientific evidence that harm reduction services, as part of a comprehensive HIV prevention strategy, are an effective public health intervention that reduces the transmission of HIV and does not encourage the use of illegal drugs;

m. Harm reduction services do not promote drug use and do not minimize the harm and danger associated with lawful and unlawful drug use. Individuals utilizing harm reduction services are often ill, in pain, and have experienced trauma. Harm reduction services are offered to these individuals by professionals who treat the individuals with compassion and who provide these necessary services without judgment;

n. There is evidence demonstrating that crime does not increase in areas in which harm reduction services locations are situated;

o. Harm reduction services do not interfere with substance use disorder treatment efforts. The services provide a bridge to substance use disorder treatment and other social services for individuals with substance use disorders;

p. For individuals who inject drugs, the best way to reduce the risk of acquiring and transmitting infectious disease through injection drug use is to stop injecting drugs, but for individuals who do not stop injecting drugs, the use of sterile injection equipment can reduce the risk of acquiring and transmitting infectious diseases and prevent outbreaks;

q. Research shows that the provision of sterile syringes is associated with an estimated 50 percent reduction in the incidence of HIV and hepatitis C, a greater likelihood that individuals will seek treatment, and decreased overdose rates; and

r. Entities offering harm reduction services in New Jersey provide sterile syringes and operate under a philosophy of harm reduction, which honors the dignity of those who use drugs or are living with a substance use disorder, reduces the negative consequences of injection drug use, and provides a stigma-free environment for people who use drugs by providing the care they desire and need.

3. Section 3 of P.L.2006, c.99 (C.26:5C-27) is amended to read as follows:

C.26:5C-27 Operation of harm reduction services.

3. The Department of Health shall permit the establishment and operation of harm reduction services in accordance with the provisions of P.L.2006, c.99 (C.26:5C-25 et al.). The department shall prescribe by regulation requirements for the establishment and operation of harm reduction services to provide hypodermic syringes and needles in accordance with the provisions of P.L.2006, c.99 (C.26:5C-25 et al.).

a. The department shall:

(1) permit a registration form, to be submitted in a manner prescribed by the department, from any entity that seeks to provide harm reduction services in New Jersey, which shall be a prerequisite to so doing;

(2) approve or deny a registration request based upon the requirements established by regulation of the department;

(3) support and facilitate, to the maximum extent practicable, the linkage of harm reduction services to: (a) health care facilities and programs that may provide appropriate health care services, including mental health services, medication-assisted treatment services, and other substance use disorder treatment services to consumers receiving harm reduction services; and (b) housing assistance programs, career and employment-related counseling programs, and education counseling programs that may provide appropriate ancillary support services to consumers receiving harm reduction services;

(4) provide for the adoption of a uniform membership card or other uniform Statewide means of identification for consumers, staff, and volunteers of entities offering authorized harm reduction services pursuant to paragraph (9) of subsection b. of section 4 of P.L.2006, c.99 (C.26:5C-28); and

(5) maintain a record of de-identified statistical aggregate data reported to the department by entities offering authorized harm reduction services pursuant to paragraph (11) of subsection b. of section 4 of P.L.2006, c.99 (C.26:5C-28).

b. The department shall be authorized to accept funding as may be made available from the private sector to effectuate the purposes of P.L.2006, c.99 (C.26:5C-25 et al.).

4. Section 4 of P.L.2006, c.99 (C.26:5C-28) is amended to read as follows:

C.26:5C-28 Establishment, authorization by municipality of certain programs.

4. a. In accordance with the provisions of section 3 of P.L.2006, c.99 (C.26:5C-27), an eligible entity may be approved by the department to provide authorized harm reduction services in this State.

(1) An entity authorized to provide harm reduction services may provide the services at a fixed location or through a mobile access component, and may operate the program directly or contract with one or more of the following entities to operate the program: a hospital or other health care facility licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.), a federally qualified health center, a public health agency, a substance abuse treatment program, an AIDS service organization, or another nonprofit entity designated by the department. An entity

authorized to provide harm reduction services shall be managed in accordance with standards or guidance issued by the Division of HIV, STD, and TB Services in the Department of Health and in a manner that is consistent with national best practices for the provision of harm reduction services and all applicable State laws and regulations that are not otherwise to the contrary.

(2) (deleted by amendment, P.L.2021, c.396)

(3) (deleted by amendment, P.L.2021, c.396)

(4) To the extent permitted under federal law, and subject to the requirements of federal law, notwithstanding any provision of State law to the contrary, an authorized entity may deliver harm reduction services or other related supplies, as determined by the commissioner, to consumers via postal mail or other delivery service.

b. An entity authorized to provide harm reduction services shall comply with the following requirements:

(1) Sterile syringes and needles shall be provided at no cost to consumers 18 years of age and older, provided that the department may authorize sterile syringes and needles to be provided at no cost to consumers under 18 years of age in limited circumstances, at the department's discretion;

(2) An entity authorized to provide harm reduction services shall be responsible for training program staff in the following subjects: harm reduction; substance use disorder; medical and social service referrals; infection control procedures, including universal precautions and needle stick injury protocol; and other subjects as determined by the entity authorized to provide harm reduction services and the department. Entities authorized to provide harm reduction services shall maintain records of staff and volunteer training;

(3) Entities authorized to provide harm reduction services shall offer information about HIV, hepatitis C and other bloodborne pathogens and information concerning the safe use of drugs by intravenous injection at no cost to consumers, and shall seek to educate all consumers about safe and proper disposal of needles and syringes;

(4) Entities authorized to provide harm reduction services shall provide information and referrals to consumers, including HIV, hepatitis C, and sexually transmitted infection testing options, access to medication-assisted substance use disorder treatment programs and other substance use disorder treatment programs, and available health and social service options relevant to the needs of consumers. The entity shall encourage consumers to receive HIV, hepatitis C, and sexually transmitted infection tests;

(5) Except as may otherwise be authorized by the department pursuant to paragraph (1) of this subsection, entities authorized to provide harm reduction services shall screen out consumers under 18 years of age from access to syringes and needles, and shall refer them to substance use disorder treatment and other appropriate programs for youth;

(6) Entities authorized to provide harm reduction services shall develop a plan for the handling and disposal of used syringes and needles in accordance with requirements set forth at N.J.A.C.7:26-3A.1 et seq. for regulated medical waste disposal pursuant to the "Comprehensive Regulated Medical Waste Management Act," P.L.1989, c.34 (C.13:1E-48.1 et al.), and shall also develop and maintain protocols for post-exposure treatment;

(7) (a) Entities authorized to provide harm reduction services may obtain and distribute naloxone hydrochloride or another opioid antidote to consumers, to family members and friends of consumers, and to any member of the general public, in accordance with the "Overdose Prevention Act," P.L.2013, c.46 (C.24:6J-1 et al.) and P.L.2021, c.152;

(b) Entities authorized to provide harm reduction services shall provide overdose prevention information to consumers and to family members and friends of consumers, and to

members of the general public, in accordance with the provisions of section 5 of the "Overdose Prevention Act," P.L.2013, c.46 (C.24:6J-5);

(8) Entities authorized to provide harm reduction services shall maintain the confidentiality and security of information about consumers receiving harm reduction services through appropriate administrative, technical, and physical controls and safeguards that protect the confidentiality, integrity, and availability of individually identifiable information about consumers;

(9) Entities authorized to provide harm reduction services shall provide a uniform membership card that has been approved by the department to consumers and to staff and volunteers involved in transporting, exchanging or possessing syringes and needles, or shall provide for such other uniform Statewide means of identification as may be approved by the department for this purpose;

(10) Entities authorized to provide harm reduction services shall provide consumers at the time of enrollment with a schedule of the entity's operation hours and locations, in addition to information about prevention and harm reduction and substance use disorder treatment services; and

(11) Entities authorized to provide harm reduction services shall establish and implement accurate data collection methods and procedures as required by the department for the purpose of evaluating the provision of harm reduction services.

(a) (deleted by amendment, P.L.2021, c.396)

(b) (deleted by amendment, P.L.2021, c.396)

(c) (deleted by amendment, P.L.2021, c.396).

c. The department shall have sole authority to terminate authorization for an entity to provide harm reduction services that was approved by the department, without the need for application or approval by the host municipality.

d. The provisions of P.L.2006, c.99 (C.26:5C-25 et al.) shall not be construed as preempting the powers and the authority granted to municipalities under the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.), nor as requiring a determination that the provision of harm reduction services is an inherently beneficial use thereunder.

5. Section 5 of P.L.2006, c.99 (C.26:5C-29) is amended to read as follows:

C.26:5C-29 Reports to Governor, Legislature.

5. a. (1) The Commissioner of Health shall report to the Governor and, pursuant to section 2 of P.L.1991, 164 (C.52:14-19.1), the Legislature, no later than one year after the effective date of P.L.2006, c.99 (C.26:5C-25 et al.) and biennially thereafter, on the status of harm reduction services provided by entities authorized to provide those services pursuant to sections 3 and 4 of P.L.2006, c.99 (C.26:5C-27 and C.26:5C-28), and shall include in that report the data provided to the department by each entity authorized to provide harm reduction services pursuant to paragraph (11) of subsection b. of section 4 of P.L.2006, c.99 (C.26:5C-28).

(2) For the purpose of each biennial report pursuant to paragraph (1) of this subsection, the department shall:

(a) collaborate with local stakeholders, including healthcare providers, healthcare systems, social services providers, and law enforcement, to provide education and collect data on the value of providing harm reduction services in municipalities in which the services are provided; and

(b) determine the type of data to be reported and shared, which may include the number of consumers served, the number of syringes distributed, the number of referrals made to social

support services and healthcare providers, overall crime statistics, and the incidence and locations of needle stick injuries.

b. (Deleted by amendment, P.L.2016, c.36)

c. The department shall prepare a detailed analysis of harm reduction services provided pursuant to P.L.2006, c.99 (C.26:5C-25 et al.), and report on the results of that analysis to the Governor, the Governor's Advisory Council on HIV/AIDS and Related Blood-Borne Pathogens, and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), the Legislature annually. The analysis shall include, but not be limited to:

(1) any increase or decrease in the spread of HIV, hepatitis C and other bloodborne pathogens that may be transmitted by the use of contaminated syringes and needles;

(2) the number of exchanged syringes and needles and an evaluation of the disposal of syringes and needles that are not returned by consumers;

(3) the number of consumers receiving harm reduction services and an assessment of their reasons for accessing those services;

(4) the number of consumers receiving harm reduction services who participated in substance use disorder treatment programs; and

(5) the number of consumers receiving harm reduction services who benefited from counseling and referrals to programs and entities that are relevant to their health, housing, social service, employment and other needs.

d. (Deleted by amendment, P.L.2016, c.36)

6. Section 7 of P.L.2006, c.99 (C.26:5C-31) is amended to read as follows:

C.26:5C-31 Rules, regulations.

7. a. Notwithstanding any provision of law to the contrary, the Commissioner of Health, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall adopt rules and regulations to effectuate the purposes of P.L.2006, c.99 (C.26:5C-25 et al.).

b. Notwithstanding any provision of P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the commissioner shall adopt, immediately upon filing with the Office of Administrative Law and no later than the 90th day after the effective date of P.L.2006, c.99 (C.26:2C-25 et al.), such regulations as the commissioner deems necessary to implement the provisions of sections 3 and 4 of P.L.2006, c.99 (C.26:5C-27 and C.26:5C-28), which shall be effective until the adoption of rules and regulations pursuant to subsection a. of this section and may be amended, adopted or readopted by the commissioner in accordance with the requirements of P.L.1968, c.410 (C.52:14B-1 et seq.).

c. Notwithstanding any provision of P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the commissioner may adopt, immediately upon filing with the Office of Administrative Law, such regulations as the commissioner deems necessary to implement the provisions of P.L.2021, c.396 (C.26:5C-26.1 et al.), which shall be effective for a period not to exceed 180 days and thereafter may be amended, adopted or readopted by the commissioner in accordance with the requirements of P.L.1968, c.410 (C.52:14B-1 et seq.).

7. This act shall take effect immediately.

Approved January 18, 2022.