
SENATE COMMITTEE ON ENVIRONMENTAL QUALITY

Senator Allen, Chair

2021 - 2022 Regular

Bill No: AB 1344
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Urgency: No
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Fiscal: Yes

SUBJECT: State Department of Public Health: needle and syringe exchange services

DIGEST: Exempts from CEQA hypodermic needle and syringe exchange services.

ANALYSIS:

Existing law:

- 1) Under the Clean Needle and Syringe Exchange Program (Health & Safety Code (HSC) §§121349 et seq.):
 - a) Authorizes a clean needle and syringe exchange project (SEP) in any city, county, or city and county upon the action of any of the following (HSC §121349(b)):
 - i) The county board of supervisors and the local health officer or health commission of that county;
 - ii) The city council, mayor, and the local health officer of a city with a health department; or
 - iii) The city council and the mayor of a city without a health department.
 - b) Allows the California Department of Public Health (CDPH) to authorize entities that provide SEP services for no more than two years, as specified, in any location where CDPH determines that the conditions exist for the rapid spread of HIV, viral hepatitis, or any other potentially deadly or disabling infections that are spread through the sharing of used hypodermic needles and syringes. (HSC §121349(c))
 - i) Requires authorization be made after consultation with the local health officer and local law enforcement leadership, and after a period of public comment, as specified.

- ii) Requires CDPH, in making the determination, to balance the concerns of law enforcement with the public health benefits.
 - iii) Permits CDPH, before the end of the two-year period, to reauthorize the program in consultation with the local health officer and local law enforcement leadership.
- c) Requires an entity's application, in order to be authorized to conduct a SEP project, to demonstrate that the entity complies with certain minimum standards, including providing certain services and providing for the safe recovery and disposal of used syringes and sharps waste from all of its participants. (HSC §121349(d))
- d) Requires CDPH, if the application is provisionally deemed appropriate, to provide a public comment period at least 45 days before approval of the application as follows:
- i) Post on CDPH's website the name of the applicant, the nature of the services, and the location where the applying entity will provide the services;
 - ii) Send a written and an email to the local health officer of the affected jurisdiction;
 - iii) Send a written and an email notice to the chief of police, the sheriff, or both, of the jurisdictions in which the program will operate.
- 2) The California Environmental Quality Act (CEQA) requires lead agencies with the principal responsibility for carrying out or approving a proposed project to prepare a negative declaration, mitigated negative declaration, or environmental impact report (EIR) for this action, unless the project is exempt from CEQA. (CEQA includes various statutory exemptions, as well as categorical exemptions in the CEQA Guidelines.)

This bill:

- 1) Requires SEP services application submissions, authorizations, and operations performed pursuant to the Clean Needle and Syringe Exchange Program to be exempt from review under CEQA.
- 2) Specifies that this bill is intended to be declaratory of existing law.

Background

- 1) *Overview of CEQA Process.* CEQA provides a process for evaluating the environmental effects of a project, and includes statutory exemptions, as well as categorical exemptions in the CEQA guidelines. If a project is not exempt from CEQA, an initial study is prepared to determine whether a project may have a significant effect on the environment. If the initial study shows that there would not be a significant effect on the environment, the lead agency must prepare a negative declaration (ND). If the initial study shows that the project may have a significant effect on the environment, the lead agency must prepare an environmental impact report (EIR).

Generally, an EIR must accurately describe the proposed project, identify and analyze each significant environmental impact expected to result from the proposed project, identify mitigation measures to reduce those impacts to the extent feasible, and evaluate a range of reasonable alternatives to the proposed project. Prior to approving any project that has received environmental review, an agency must make certain findings. If mitigation measures are required or incorporated into a project, the agency must adopt a reporting or monitoring program to ensure compliance with those measures.

- 2) *Needle and syringe exchange programs (SEPs).* SEPs reduce the spread of HIV, acute hepatitis C virus (HCV), and other blood-borne pathogen infections and are an effective component of comprehensive community-based prevention and intervention programs that provide additional services. These include vaccination, testing, linkage to infectious disease and substance use treatment, and access to and disposal of syringes and injection equipment.

SEPs have been operating in California since the late 1980s, providing sterile syringes, collecting used ones, and acting as a point of access to health education and help for people who inject drugs (PWID). California SEPs provide a wide range of services in addition to syringe exchange and disposal, including HIV and HCV testing, overdose prevention training, and referrals to drug treatment, housing, and mental health services. They operate in a variety of settings, including in health clinics, mobile vans, storefronts, and churches. Some offer street-based services in multiple locations, others offer services daily during standard business hours, and still others provide home delivery services. In order to be authorized for operation, an SEP must include a syringe collection and sharps waste disposal plan that is designed to maximize the return of used syringes, that tracks the number of syringes returned, and includes sharps waste disposal education for staff and participants (17 C.C.R. §7012).

AB 604 (Skinner, 2011) permitted DPH to authorize hypodermic needle and syringe services “in any location where the department determines that the conditions exist for the rapid spread of HIV, viral hepatitis, or any other potentially deadly or disabling infections that are spread through the sharing of used hypodermic needles and syringes.” Prior to AB 604, only local governments had the authority to establish syringe services programs.

This authority was made permanent in the 2018 budget bill (AB 1810). That bill provided that “[i]n order to reduce the spread of HIV infection, viral hepatitis, and other potentially deadly blood-borne infections, the State Department of Public Health may, notwithstanding any other law, authorize entities that provide [needle and syringe exchange] services...to apply for authorization” for such services “after consultation with the local health officer and local law enforcement leadership, and after a period of public comment...”.

DPH has authorized syringe services programs in 19 counties since 2011. These include programs offered by clinics, health departments and community-based organizations in Alameda, San Diego, Kern, Riverside, Santa Cruz, Humboldt, Sacramento, Inyo, El Dorado, Kings, Mono, Lake, Merced, Plumas, San Joaquin, Siskiyou and Yuba/Sutter counties.

- 3) *Notice and public participation requirements of SEPs.* Pursuant to the Clean Needle and Syringe Exchange Program, HSC §121349 requires CDPH to provide a specific public comment period that includes all of the following:
- Posting on CDPH’s website the name of the applicant, the nature of the services, and the location where the applying entity will provide the services;
 - Sending a written and an email notice to the local health officer of the affected jurisdiction; and
 - Sending a written and an email notice to the chief of police, the sheriff, or both, of the jurisdictions in which the program will operate.

Regulations also require a 90-day public comment period which commences once the application has been posted on CDPH’s website and during which the public may comment online (17 C.C.R. §7002).

Further, HSC §121349.2 requires that the public be given the opportunity to provide input to local leaders to ensure that any potential adverse impacts on the public welfare of a SEP area are addressed and mitigated. Regulations require that an SEP include a community relations plan that, among other things, documents concerns and positive feedback expressed by program participants community members, neighborhood associations, and local law

enforcement officials; and to document steps the program has taken to address any reasonable concerns (17 C.C.R. §7012).

- 4) *Lawsuits against SEPs*. Lawsuits containing CEQA claims have been filed against SEPs in Orange County, Butte County, and Santa Cruz. Some of those complaints also contained non-CEQA claims, such as nuisance.

Pending lawsuit in Santa Cruz. On December 8, 2020, four residents of Santa Cruz County, organized under the organization name “Grant Park Neighborhood Association Advocates,” (plaintiffs) filed a lawsuit in Sacramento Superior Court against CDPH and the Harm Reduction Coalition of Santa Cruz County (HRCSCC), seeking to nullify CDPH’s authorization of HRCSCC’s syringe services program. An initial hearing date has been scheduled for September 24, 2021.

The plaintiff’s complaint contains both CEQA and non-CEQA claims. With regard to CEQA, the plaintiffs argue that CDPH failed to perform the required environmental review needed for the distribution, collection, and disposal of used needles. Because of this, the plaintiff’s argue, CDPH’s authorization of the HRCSCC SEP was unauthorized and unlawful. As to the non-CEQA claims, plaintiffs allege that HRCSCC is a public nuisance pursuant to California Civil Code §§3479 and 3480.

Orange County. In the Orange County case (filed August 2018), the court ruled in its initial statement of decision that the CEQA and public nuisance aspects of the complaint could proceed at trial, while rejecting several other causes of action. Soon after, and before a trial took place, the court issued a writ of mandate that (1) set aside CDPH’s authorization to operate a mobile syringe exchange program in Orange County through August 6, 2020, and (2) requires CDPH to undertake a CEQA-compliant environmental review prior to authorizing any future mobile syringe program in Orange County. In doing so, the court interpreted the SEPs as “projects” that are subject to CEQA.

Butte County. In Butte County, various individuals and businesses sought to invalidate and enjoin the operation of an SEP on the grounds that its authorization was invalid since no environmental review of the resulting needle litter was conducted. The Butte County case (filed April 2020) was settled by stipulated agreement in October 2020 by the SEP agreeing to withdraw its application to CDPH and cease providing syringe services. CDPH agreed to complete an environmental review prior to authorizing a future SEP application in the county.

Comments

- 1) *What do we lose when we exempt a project from CEQA?* Often groups will seek a CEQA exemption to expedite construction of a particular type of project. This bill seeks a CEQA exemption to ensure that SEPs can be available to PWID. Providing an exemption, however, can overlook the benefits of environmental review: to inform decisionmakers and the public about project impacts and identify ways to avoid or significantly reduce environmental damage.

“CEQA operates, not by dictating pro-environmental outcomes, but rather by mandating that ‘decision makers and the public’ study the likely environmental effects of contemplated government actions and thus make fully informed decisions regarding those actions. . . . In other words, CEQA does not care what decision is made as long as it is an informed one.” (Citizens Coalition Los Angeles v. City of Los Angeles (2018) 26 Cal. App. 5th 561, 577.)

CEQA’s noticing requirements, public participation requirements, and mitigation requirements would not apply should this bill be enacted; but it is noted that SEPs are subject to their own notice, public participation, and mitigation measure, as specified by statute and regulation.

- 2) *SEPs and litter concerns.* The complaints filed in Santa Cruz, Orange County, and Butte County contained CEQA claims that the SEP programs have – or in the case of Santa Cruz, would- increase litter, creating environmental hazards.

However, after an Orange County SEP ceased operation, a litter study noted that that “in the location proposed by OCNEP [Orange County Needle Exchange Program] in Santa Ana, the visual inspection walkthrough showed a substantial amount of syringe litter months after OCNEP closure. Syringe litter is a problem in Santa Ana, and not having access to a syringe exchange or proper disposal for PWID will likely increase the problem of syringe litter. Decreased access to syringes, as a result of OCNEP’s closure, has likely put PWID in Orange County at a greater risk of contracting HIV and HCV. Overall, participants in both groups were unaware of or did not have access to a safe disposal location other than OCNEP. Many of the participants in both groups understood the importance of safe syringe disposal and wanted to do something to decrease syringe litter.”

Additionally, a 2019 litter study conducted by Santa Cruz County Health Service Agency states that, “Overall, the amount of syringes that are disposed safely vastly outnumbers the amount of syringe litter in the community. The

ratio of syringes improperly disposed of compared to those properly disposed of during the inspection period is 0.0103 or... in other words, for every 1,000 needles disposed of within Santa Cruz County, about ten needles are disposed of improperly as litter.” The report recommendations include expanded hours of syringe service programs, and situate sharps disposal kiosks in additional locations.

Related/Prior Legislation

AB 604 (Skinner, 2011) permitted CDPH, until January 1, 2019, to authorize specified entities to provide hypodermic needle and syringe exchange services, as specified, in any location where CDPH determines that the conditions exist for the rapid spread of HIV, viral hepatitis, or any other potentially deadly or disabling infections that are spread through the sharing of used needles and syringes. AB 1810 (Budget Committee, Chapter 34, Statutes of 2018) deleted the 2019 sunset date.

DOUBLE REFERRAL:

This measure was heard in Senate Health Committee on June 16, 2021, and passed out of committee with a vote of 8 - 1.

SOURCE: Drug Policy Alliance (co-sponsor)
National Harm Reduction Coalition (co-sponsor)
San Francisco AIDS Foundation (co-sponsor)

SUPPORT:

ACLU California Action
Alcohol Justice
California Association of Social Rehabilitation Agencies
League of Women Voters of California

OPPOSITION:

None received