

# American Medical Association Journal of Ethics

March 2016, Volume 18, Number 3: 252-257

## HEALTH LAW

### Needle Exchange Programs' Status in US Politics

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In March of 2015, Governor Mike Pence of Indiana declared a public health emergency. This call was issued amidst the realization that, following months of rising case numbers, there was an outbreak of HIV in the southeastern part of the state [1]. The outbreak in this predominately rural community would culminate at a final count of 185 cases [2], largely the result of needle sharing by intravenous drug users abusing the prescription painkiller Opana [3]. What made this a noteworthy public health crisis was how the state government ultimately responded. In the hope of stopping the spread of HIV across this part of the state, Governor Pence called for the opening and funding of temporary [needle exchange programs \(NEPs\)](#) where injection drug users could dispose of used syringes and obtain sterile ones, despite his prior opposition to such programs [1].

For decades, NEPs have been a [controversial](#) public health strategy in the United States. Although the scientific literature on these programs has presented strong evidence of their efficacy in curtailing transmission of diseases such as HIV and hepatitis C among injection drug users [4-8], 33 states in this country have banned the practice (including Indiana) as of June 2014 [9], and federal law has long prohibited the US government from funding NEPs. In the wake of the Indiana HIV outbreak, states such as Kentucky, which once banned NEPs, have allowed NEPs to open following changes in state law [10]. The biggest change, however, has come from the federal government, which, as of 2016, has changed its legal position on NEPs, allocating federal funds to support these endeavors. This article discusses the political and legal history of the federal prohibition on funding NEPs and how these polarizing medical and public health strategies have finally gained greater acceptance.

Since their first appearance in Amsterdam in 1983 [11], NEPs have been a lightning rod of controversy when proposed as a means to limit disease transmission [12]. In the United States, opponents of NEPs have largely focused on three main arguments for blocking their use [13]. First, they argue, the federal funding of NEPs would contradict law enforcement efforts in the US's "war on drugs" by signaling tacit governmental approval of illegal drug use [14]. Second, they claim, federal funding of NEPs and availability of sterile syringes could cause a rise in drug abuse and diminish public health [14]. Third, they assert, federal approval of NEPs and removal of an obstacle to unsafe drug use could have a corrupting influence on children [15].

NEP proponents point to the myriad public health benefits these resources provide. There is a wealth of scientific evidence demonstrating that NEPs reduce blood-borne infectious diseases transmission among injection drug users [4-8], as has been acknowledged by, for example, many national governments [16], the World Health Organization [17], and the American Medical Association [18]. Supporters argue that NEPs provide resources on drug treatment, which can motivate users to pursue recovery, thereby potentially reducing illegal drug use rates and criminal behavior [13]. Finally, supporters aver that NEPs can protect nonusers, such as law enforcement officers and health care professionals, who could be pricked by a contaminated needle when interacting with or treating injection drug users outside the controlled, hygienic environments that NEPs provide [19].

### **Origins of the Federal Ban on NEPs**

Opposition to NEPs in the United States has been purely ideological in nature [12], stemming from the political position that NEPs “undercut the credibility of society’s message that drug use is illegal and morally wrong” [20]. The federal ban on NEPs began in 1988, after North Carolina Senator Jesse Helms equated NEPS with a federal endorsement of drug abuse [17] and led Congress to enact a prohibition on the use of federal funds for such programs [21]. This ban became law through the Public Health and Welfare Act, section 300ee-5, which stated that “none of the funds provided under this Act or an amendment made by this Act shall be used to provide individuals with hypodermic needles or syringes so that such individuals may use illegal drugs” [22]. It was not an absolute ban, though [21], given that Congress included a provision in the ban stating that the funding prohibition could be lifted when “the Surgeon General of the Public Health Service determines that a demonstration needle exchange program would be effective in reducing drug abuse and the risk that the public will become infected with [HIV]” [22]. Despite evidence from the medical and public health communities that NEPs reduced infectious disease transmission, subsequent legislation in the years following this act focused exclusively on treatment, renewing the ban and including it in the much-lauded HIV/AIDS federal program, the Ryan White Comprehensive AIDS Resources Emergency Act [23].

### **Opportunity for Change During the Clinton Years**

During the 1990s, a panel of the Institute of Medicine recommended that the US government lift the federal ban on NEPs, based on evidence that such programs reduced HIV rates without increasing drug usage [24]. Furthermore, the Centers for Disease Control and Prevention conducted its own review of NEPs and found equally beneficial results [25], adding even greater legitimacy to the call for lifting the ban.

In 1997, the opportunity for Congress to lift the NEP ban appeared to be at hand. That year Congress passed Public Law 105-78, which included amended language that would allow for the ban’s removal if “the Secretary of Health and Human Services determines

that exchange projects are effective in preventing the spread of HIV and do not encourage the use of illegal drugs" [26]. By April of 1998, Donna Shalala, then secretary of the Department of Health and Human Services, prepared to hold a press conference to announce that the Clinton administration had decided to lift the NEP ban [27]. Republican opposition intervened, however. On April 22, 1998, Republican Representative Denny Hastert of Illinois denounced this anticipated move on the floor of the House of Representatives, saying "I think we have a bad message, certainly a bad message to drug addicts to all of a sudden say it cannot be too bad. The Federal Government is giving me the paraphernalia to put these drugs in my veins" [28]. He echoed concerns that lifting the ban would send a mixed message to kids about drug use: "You cannot use drugs. That is bad. That is illegal. But if you want the free needles to use them, here they are" [28]. Amid discussions about political risks involved in lifting the ban, President Clinton ultimately decided to forgo pushing for changes to the federal law, and, instead of holding a press conference to announce an end to the NEP restrictions, Secretary Shalala stated that the ban would remain in effect [28].

### **A Reversal**

During the George W. Bush Administration, the ban remained in place [29]. Although Barack Obama campaigned for the presidency promising to remove the funding restrictions on NEPs [30], his administration's first budget request to Congress included the following language: "no funds appropriated in this Act shall be used to carry out any program of distributing sterile needles or syringes for the hypodermic injection of any illegal drug" [31]. Congressional Democrats opposed this language and worked with Congress and the president to remove it [27]. As a result, the NEP funding ban was lifted, and, by 2010, the Department of Health and Human Services issued guidelines for needle exchange programs wishing to receive federal funds [13].

The flow of federal funding for NEPs would be short-lived. After Republicans took control of the House of Representatives in 2011, they proposed reinstating the ban during budget negotiations with the president and Democratic leadership [32]. Although Democrats were able to remove a number of Republican-endorsed budget restrictions and policies, the Obama administration ultimately conceded to reestablish a funding ban on NEPs in order to avoid delaying or derailing the final 2012 budget for the entire federal government [32].

### **Effectively Removing the Ban**

Following the outbreak of HIV in Indiana, along with rapidly rising rates of injection drug use across the country, Representative Hal Rogers and Senator Mitch McConnell of Kentucky and Senator Shelley Moore Capito of West Virginia spearheaded the inclusion of language into an omnibus spending measure to remove the ban [27]. Passed by Congress at the end of December 2015 [33], the modified law is technically only a partial repeal. The use of federal money to pay for sterile syringes is still prohibited, but funds

can now be used to pay for other aspects of NEPs, including personnel, vehicles, gas, rent, and other expenditures needed to keep NEPs operational [34]. Syringes, in comparison to the items just mentioned, are inexpensive, so the restriction on paying for syringes that remains in place via the omnibus spending bill is far less financially burdensome than the prior ban [34], finally allowing the medical and public health systems to have a greater source of funding for working with injection drug users and promoting broader American public health and disease prevention.

## References

1. Schwarz A, Smith M. Needle exchange is allowed after HIV outbreak in an Indiana county. *New York Times*. March 26, 2015. <http://www.nytimes.com/2015/03/27/us/indiana-declares-health-emergency-after-hiv-outbreak.html>. Accessed January 13, 2016.
2. Indiana State Department of Health. HIV outbreak in southeastern Indiana. <http://www.in.gov/isdh/26649.htm>. Accessed January 13, 2016.
3. Goodnough A. Indiana races to fight HIV surge tied to drug abuse. *New York Times*. March 30, 2015. <http://www.nytimes.com/2015/03/31/us/small-indiana-city-races-to-curb-hivs-spread.html>. Accessed January 13, 2016.
4. Bastos FI, Strathdee SA. Evaluating effectiveness of syringe exchange programmes: current issues and future prospects. *Soc Sci Med*. 2000;51(12):1771-11782.
5. Des Jarlais DC. Research, politics, and needle exchange. *Am J Pub Health*. 2000;90(9):1392-1394.
6. Wodak A, Cooney A. Do needle syringe programs reduce HIV infection among injecting drug users: a comprehensive review of the international evidence. *Subst Use Misuse*. 2006;41(6-7): 777-813.
7. Ksobiech K. A meta-analysis of needle sharing, lending, and borrowing behaviors of needle exchange program attenders. *AIDS Educ Prev*. 2003;15(3):257-268.
8. Vlahov D, Des Jarlais DC, Goosby E, et al. Needle exchange programs for the prevention of human immunodeficiency virus infection: epidemiology and policy. *Am J Epidemiol*. 2001;154(12)(suppl):S70-S77.
9. North American Syringe Exchange Network. Syringe services program coverage in the United States—June 2014. [https://nasen.org/site\\_media/files/amfar-sep-map/amfar-sep-map-2014.pdf](https://nasen.org/site_media/files/amfar-sep-map/amfar-sep-map-2014.pdf). Accessed January 19, 2016.
10. Bailey PM, Kenning C. Louisville's needle exchange program a first for Ky. *USA Today*. June 1, 2015. <http://www.usatoday.com/story/news/nation/2015/06/01/louisville-needle-exchange-program/28323451/>. Accessed January 19, 2016.
11. Des Jarlais DC, Mathilde Krim, amfAR, and the prevention of HIV infection among injecting drug users: a brief history. *AIDS Patient Care STDs*. 2006;20(7):467-471.
12. Rich JD, Adashi EY. Ideological anachronism involving needle and syringe exchange programs: lessons from the Indiana HIV outbreak. *JAMA*. 2015;314(1):23-24.
13. Fisher M; Center for Strategic and International Studies. A history of the ban on federal funding for syringe exchange programs. February 6, 2012.

- <http://www.smartglobalhealth.org/blog/entry/a-history-of-the-ban-on-federal-funding-for-syringe-exchange-programs/>. Accessed January 19, 2016.
14. Dempsey MA. A shot in the arm: legal and societal obstacles to United States needle exchange programs. *Boston Coll Third World Law J.* 1997;17(1):31-72.
  15. Cowardice on clean needles. *New York Times*. April 22, 1998. <http://www.nytimes.com/1998/04/22/opinion/topics-of-the-times-cowardice-on-clean-needles.html>. Accessed January 19, 2016.
  16. Gay Men's Health Crisis. Syringe exchange programs around the world: the global context. [http://www.gmhc.org/files/editor/file/gmhc\\_intl\\_seps.pdf](http://www.gmhc.org/files/editor/file/gmhc_intl_seps.pdf). October 2009. Accessed January 19, 2016.
  17. World Health Organization. Policy brief: provision of sterile injecting equipment to reduce HIV transmission. <http://applications.emro.who.int/aiecf/web32.pdf>. March 2004. Accessed January 19, 2016.
  18. Seelye KQ. AMA policy group backs needle exchanges. *New York Times*. June 27, 1997. <http://www.nytimes.com/1997/06/27/us/ama-policy-group-backs-needle-exchanges.html>. Accessed January 19, 2016.
  19. American Foundation for AIDS Research. Public safety, law enforcement, and syringe exchange. May 2011. [http://www.amfar.org/uploadedFiles/\\_amfarorg/Around\\_the\\_World/TREAT\\_Asia/factsheetJan2010.pdf](http://www.amfar.org/uploadedFiles/_amfarorg/Around_the_World/TREAT_Asia/factsheetJan2010.pdf). Accessed January 19, 2016.
  20. Gordon DR. *The Return of the Dangerous Classes: Drug Prohibition and Policy Politics*. New York, NY: Norton; 1994:271.
  21. Hulse C. Surge in cases of HIV tests US policy on needle exchanges. *New York Times*. May 16, 2015. <http://www.nytimes.com/2015/05/17/us/surge-in-cases-of-hiv-tests-us-policy-on-needle-exchanges.html>. Accessed January 19, 2016.
  22. Public Health and Welfare Act, 42 USC sec 300ee-5 (2016). <https://www.gpo.gov/fdsys/pkg/USCODE-2009-title42/pdf/USCODE-2009-title42-chap6A-subchapXXIII-partA-sec300ee-11.pdf>. Accessed January 19, 2016.
  23. Ryan White Comprehensive AIDS Resources Emergency Act of 1990, Pub L No. 101-381, 104 Stat 576.
  24. Norman J, Vlahov D, Moses LE, eds. *Preventing HIV Transmission: The Role of Sterile Needles and Bleach*. Washington, DC: National Academy Press; 1995. <http://www.nap.edu/catalog/4975/preventing-hiv-transmission-the-role-of-sterile-needles-and-bleach#description>. Accessed January 19, 2016.
  25. Centers for Disease Control and Prevention. Syringe exchange programs—United States, 1994-1995. *MMWR Weekly*. September 22, 1995;44(37):684-685, 691. <http://www.cdc.gov/mmwr/preview/mmwrhtml/00039285.htm>. Accessed January 19, 2016.
  26. Public Law No. 105-78, 111 Stat 1515. <https://www.gpo.gov/fdsys/pkg/PLAW-105publ78/pdf/PLAW-105publ78.pdf>. Accessed January 28, 2016.
  27. Stanton J. After decades, Congress effectively lifts ban on federally funded needle exchanges. *BuzzFeed*. January 5, 2016. <http://www.buzzfeed.com/johnstanton/after->

decades-congress-effectively-lifts-ban-on-federally-fu#.yeLaGdJxVQ. Accessed January 19, 2016.

28. 144 *Cong Rec* H2226 (1998) (statement of Rep. Dennis Hastert). <https://www.gpo.gov/fdsys/pkg/CREC-1998-04-22/html/CREC-1998-04-22-pt1-PgH2222-2.htm>. Accessed January 19, 2016.
29. United States President's Emergency Plan for AIDS Relief website. <http://www.pepfar.gov/>. Accessed January 19, 2016.
30. Szalavitz M. Why Obama isn't funding needle-exchange programs. *Time*. May 16, 2009. <http://content.time.com/time/nation/article/0,8599,1898073,00.html>. Accessed January 26, 2016.
31. Office of Management and Budget. *Appendix: Budget of the US Government: Fiscal Year 2010*. Washington, DC: US Government Printing Office; 2009:795). <https://www.gpo.gov/fdsys/pkg/BUDGET-2010-APP/pdf/BUDGET-2010-APP.pdf>. Accessed January 19, 2016.
32. Barr S. Needle-exchange programs face new federal funding ban. *Kaiser Health News*. December 21, 2011. <http://khn.org/news/needle-exchange-federal-funding/>. Accessed January 19, 2016.
33. Ungar L. Funding ban on needle exchanges effectively lifted. *USA Today*. January 7, 2016. <http://www.usatoday.com/story/news/nation/2016/01/07/funding-ban-needle-exchanges-effectively-lifted/78420894/>. Accessed January 28, 2016.
34. Lopez G. Republicans in Congress ended the decades-long funding ban on needle exchange programs. *VOX*. January 6, 2016. <http://www.vox.com/2016/1/6/10723800/congress-needle-exchange-ban>. Accessed January 19, 2016.

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ISSN 2376-6980**