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Syringe Service Programs and Exposure to Liability

What are the liability and other legal considerations associated with creating a syringe service program (SSP)?

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Specific legal needs and challenges will vary by jurisdiction and should be carefully discussed with legal counsel. Below are a few common legal issues and associated resources:

State laws may facilitate or impede SSP activities and should be considered when developing a program. For example, one state may criminalize possession or distribution of drug paraphernalia in a manner that includes syringes intended for drug use even if they are provided through a SSP (thus potentially criminalizing a SSP's activities), while another state may specifically exclude syringes distributed by a SSP from the definition of drug paraphernalia (potentially facilitating a SSP's successful operation). Two helpful resources for researching specific states' laws on this topic include the LawAtlas compilation of [syringe distribution laws](#) and [syringe possession laws](#) and the CDC's compilation of [Laws Related to Syringe Exchange](#).

In addition to looking at state laws, local health departments may also need to consider funding restrictions (see, e.g., the CDC's discussion of [federal funding limitations and considerations](#) applicable to SSPs) as well as local laws, such as city ordinances that may contain drug paraphernalia definitions that differ from those provided by state law.

In considering potential exposure to tort liability, there are at least two important ways in which a local health department may be protected from liability for injuries associated with SSP activities:

First, there are likely to be significant barriers to a plaintiff establishing a tort claim, in part because the intended beneficiary of a SSP plays a significant intervening role in causing most injuries that might occur relating to the syringe. Though somewhat dated, the following two articles address liability concerns relating to physicians prescribing syringes to people who inject drugs. Many of the legal principles translate to the context of a public health syringe exchange program, illustrating that it would be difficult for a potential plaintiff to successfully establish a tort claim.

- [Maxwell J. Mehlman, *Liability for Prescribing Intravenous Injection Equipment to IV Drug Users*, 11 Health Matrix 73 \(1997\).](#)
- [Scott Burris, Peter Lurie, Daniel Abrahamson, and Josiah D. Rich, *Physician Prescribing of Sterile Injection Equipment to Prevent HIV Infection: Time for Action*, 133 Ann. Intern. Med. 218 \(2000\).](#)

Second, a local governmental entity that operates a SSP is likely protected to some extent by governmental immunity. State governmental immunity laws often protect governmental entities and employees from tort liability for injuries arising out of ordinary negligence (as opposed to gross negligence or some other heightened level of culpability) and relating to activities performed within the scope of a governmental function and/or within the employee's job duties. These specific protections vary significantly from state to state, so it is important to research the laws applicable to one's own jurisdiction.

Network attorneys are available to answer questions on this and other public health topics at no cost to you, and can assist you in using law to advance your public health initiatives. [Contact a Network Attorney](#) in your area for more information. The legal information and assistance provided in this document does not constitute legal advice or legal representation. For legal advice, readers should consult a lawyer in their state.

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