

STATE OF DELAWARE



EXECUTIVE DEPARTMENT DOVER

EXECUTIVE ORDER NUMBER TWENTY-EIGHT

TO: HEADS OF ALL STATE DEPARTMENTS AND AGENCIES

**RE: DIRECTING THE EVIDENCE-BASED, PHASED IMPLEMENTATION
AND CONTINUED EVALUATION OF SENATE BILL 249 AND THE
LICENSING FRAMEWORK FOR HARM REDUCTION PROGRAMS**

WHEREAS, substance use disorder and accidental drug overdose remain among the most serious public health challenges facing the State of Delaware, and while the State has made meaningful progress against this crisis, including a decline in accidental deaths from drug intoxication from 527 in calendar year 2023 to 314 in calendar year 2025, a reduction of more than forty percent, that progress has been achieved against an increasingly toxic and rapidly changing illicit drug supply, and continued and sustained effort is required to preserve and extend that progress; and

WHEREAS, Senate Bill 249 of the 153rd General Assembly establishes, within the Department of Health and Social Services, Division of Substance Abuse and Mental Health, a framework to license and regulate evidence-based harm reduction programs, and removes the personal-use items that such programs distribute, including equipment used to check the drug supply for adulterants such as fentanyl, xylazine, and medetomidine, from the definition of drug paraphernalia; and

WHEREAS, the State already supports harm reduction services, including syringe services delivered under contract through the Division of Substance Abuse and Mental Health, and Senate Bill 249 provides, for the first time, a dedicated statutory licensing framework through which the Division of Substance Abuse and Mental Health may authorize, standardize, and oversee these services; and

WHEREAS, the evidence supporting core harm reduction interventions, including syringe services, the distribution of opioid antagonists such as naloxone, infectious disease screening, drug-checking supplies, and linkage to treatment and other services, is strong and well established, and these interventions have been shown to reduce the transmission of infectious disease, connect individuals to care, and save lives; and

WHEREAS, other elements authorized by Senate Bill 249, including the distribution of supplies for non-injection routes of use and the removal of criminal penalties for the possession of personal-use paraphernalia, represent more recent policy approaches whose longer-term, population-level effects continue to be studied, making the pace and scope of program licensure well suited to careful, phased implementation and ongoing evaluation; and

WHEREAS, members of the public, healthcare providers, individuals in recovery, and law enforcement expressed a range of views on Senate Bill 249, with many supporters emphasizing that harm reduction meets vulnerable individuals where they are and opens a pathway to treatment, and with law enforcement organizations and others emphasizing the need for clear pathways to recovery and for careful attention to community safety; and

WHEREAS, it is the policy of this Administration that programs affecting public health and public safety be grounded in the best available scientific evidence, be implemented in a deliberate and phased manner, be continuously evaluated for both their intended benefits and any unintended consequences, and be informed by ongoing engagement with the communities and stakeholders they affect; and

WHEREAS, the State has established coordinating and evaluation infrastructure that can support the rigorous and transparent assessment of these efforts, including the Division's Overdose Response Center, which analyzes drug supply and overdose trends in near real time and shares publicly available reports, and the Division's Addiction Treatment Resource Center data hub, which maintains publicly available outcome data, and any evaluation of the effects of a given policy must account for the increasingly toxic and rapidly changing illicit drug supply, including the spread of adulterants such as xylazine and medetomidine; and

WHEREAS, certain provisions of Senate Bill 249, including the removal of criminal penalties for personal-use paraphernalia, are established by statute and may be altered only by the General Assembly, and it is therefore prudent that the State commit to the rigorous and continuing evaluation of those provisions and stand ready to recommend legislative action should the evidence warrant; and

WHEREAS, a phased implementation, under which program licensure expands in a deliberate and measured manner, and under which any expansion of the program is conditioned upon demonstrated positive results, best allows the State to realize the public health benefits of Senate Bill 249 while guarding against the risk of unintended harm.

NOW, THEREFORE, I, MATTHEW MEYER, by virtue of the authority vested in me as Governor of the State of Delaware, do hereby **DECLARE** and **ORDER** the following:

1. **Evidence-Based Regulations.** The Department of Health and Social Services (the "Department"), acting through the Division of Substance Abuse and Mental Health ("DSAMH"), shall promptly develop and promulgate the regulations necessary to implement the licensing framework established by Senate Bill 249. The regulations

shall be evidence-based; shall require that supplies distributed be new and unused and sterile where sterility is applicable to the supply; and shall establish clear standards for licensure and authorization, program accountability, participant confidentiality, data collection, and appropriate public transparency. The Department shall develop the regulations in coordination with the Office of the Governor and shall keep the Office of the Governor apprised throughout the regulatory review process.

2. **Phased Implementation.** The Department shall implement the program in phases, as follows:

- a. In the initial phase, the Department shall prioritize and, as appropriate, transition existing syringe services and other well-established, evidence-based services, including the distribution of opioid antagonists, infectious disease screening, drug-checking supplies, wound care, overdose education, safe disposal, and linkage to treatment, housing, and other services, from their current contractual arrangements into the licensing framework established by Senate Bill 249, providing a reasonable on-ramp for existing providers to come into compliance without interruption of care.
- b. Any subsequent expansion of the use of state funding for any category of supplies for which the supporting evidence is emerging shall occur only upon a written determination by the Secretary of the Department, informed by the outcome data and evaluation described in this Order, that the preceding phase has produced positive public health results without significant unintended harm, and only after the community and stakeholder consultation described in this Order. State funds for supplies and services for which the supporting evidence is still emerging shall be subject to heightened monitoring and priority evaluation under Paragraph 3 of this Order, and the Department shall report on their outcomes as part of the evaluation required under Paragraph 5.

3. **Outcome Monitoring, Baselines, and Independent Evaluation.** The Department shall, before or at the outset of implementation, establish clear and measurable outcome metrics and baseline measurements against which both the program and the statutory changes made by Senate Bill 249 can later be assessed, and shall, to the extent practicable, integrate this evaluation into the State's existing outcome-measurement infrastructure, including the Division's Overdose Response Center and Addiction Treatment Resource Center data hub. Using aggregate, de-identified data obtained consistent with § 4807 of Title 16, as enacted by Senate Bill 249, and Paragraph 4 of this Order, and consistent with the participant-anonymity and confidentiality protections of Senate Bill 249, the Department shall monitor and analyze indicators sufficient to evaluate public-health impact and to detect any unintended consequences, including trends in fatal and nonfatal overdose, infectious-disease transmission, and emergency department utilization, disaggregated by geography where appropriate; linkage to treatment and recovery; indicators of community safety, such as trends in drug-related and property crime

and in public-order complaints within program service areas, as reflected in existing law-enforcement and public-safety data; improper disposal of equipment, and youth exposure or diversion; and, with respect to the removal of criminal penalties for personal-use paraphernalia, trends in arrests, prosecutions, and diversions to care. In conducting this analysis, the Department shall account for changes in the composition and toxicity of the illicit drug supply. The Department shall give priority to those components for which the existing evidence base is more limited and may engage an independent or academic evaluator to ensure the evaluation is methodologically sound, including by comparison to Delaware's own pre-enactment experience and to the experience of other jurisdictions. Where such an evaluation involves participant contact, a program's participation shall be subject to the Department's authorization under § 4807(c) of Title 16, as enacted by Senate Bill 249.

4. **Interagency Data Assistance.** The Department of Safety and Homeland Security, including the Division of Forensic Science and the Delaware State Police; the Delaware Information and Analysis Center; the Delaware Criminal Justice Council, including the Delaware Justice Information System; the Department of Services for Children, Youth and Their Families; and the Department of Education shall provide the Department with aggregate, de-identified data reasonably necessary to conduct the evaluation required under this Order. The Department of Justice and the Delaware courts are requested to provide such assistance to the extent consistent with their respective independent authorities and practicable within their operations. Data shared under this paragraph shall be used solely for the evaluation described in this Order and shall be maintained consistent with applicable law governing the confidentiality of the underlying records.
5. **Continuous Evaluation and Public Reporting.** The Department shall evaluate both the licensed harm reduction program and the statutory changes made by Senate Bill 249 on an ongoing basis and shall report in writing to the Governor no later than twelve (12) months after the effective date of the regulations promulgated under this Order, and at least annually thereafter. The Department shall present its findings to the Addiction Action Committee to provide a public forum for discussion, and may coordinate this reporting with, and may incorporate it into, the annual report submitted to the Governor and the General Assembly by the Addiction Action Committee. Each report shall address both the program and the removal of criminal penalties for personal-use paraphernalia; shall describe measured outcomes; shall identify any unintended consequences; and shall set forth the Department's recommendation as to whether and how the program and the underlying policy should be continued, modified, or expanded. The Department shall make its evaluation findings available to the public in aggregate, de-identified form.
6. **Evaluation of Removal of Criminal Penalties and Recommendation of Legislative Action.** The Department shall specifically and annually evaluate whether the removal of criminal penalties for personal-use paraphernalia is associated with any change in disease transmission, overdose, death, or community

safety. In making this assessment, the Department shall account for other factors that affect these outcomes, including changes in the composition and toxicity of the illicit drug supply, so that any conclusion is reasonably attributable to the change in law. If strong evidence reasonably attributable to the removal of criminal penalties indicates that it has contributed to an increase in disease transmission or in death, the Department shall promptly so advise the Governor and shall recommend appropriate action. Because this change is a matter of statute that cannot be altered by executive action, such recommendations may include that the Governor propose, and the General Assembly consider, amendments to modify, restore, or further adjust the applicable provisions of Title 16. Any such recommendation shall be supported by the data and methodology described in this Order.

7. Consultation with Law Enforcement, Justice, and Public Safety Stakeholders.

In developing, implementing, and evaluating the program and the changes made by Senate Bill 249, the Department shall solicit and give due consideration to the input of the Department of Safety and Homeland Security, including the Delaware State Police; the Department of Justice, including the Attorney General, particularly with respect to criminal-justice data and to implementation guidance concerning the removal of criminal penalties for personal-use paraphernalia; and statewide organizations representing law enforcement, including the Delaware Association of Chiefs of Police and the Fraternal Order of Police, with particular attention to ensuring clear pathways to treatment and recovery and to protecting community safety, including through the forum described in Paragraph 5 of this Order. In furtherance of these pathways, the Division shall pursue voluntary deflection and referral arrangements with State, county, and municipal law enforcement agencies under § 4803(d) of Title 16, as enacted by Senate Bill 249, connecting individuals to programs and behavioral health treatment services before and after arrest.

8. Guardrails and Corrective Action. If, at any time, the Department's monitoring or evaluation indicates, on strong evidence reasonably attributable to any component of the program within the Department's administrative authority, that the component is associated with an increase in overdose deaths, infectious disease transmission, or other indicators identified under Paragraph 3 of this Order, the Department shall promptly pause, modify, or discontinue the affected component and shall report the same to the Governor, together with its recommended corrective action. The Department shall promulgate rules to establish clear standards and procedures for any such required pause, modification, or discontinuation of a program component. With respect to the statutory removal of criminal penalties for personal-use paraphernalia, which lies beyond the Department's authority to alter by regulation, the Department shall proceed as provided in Paragraph 6 of this Order.

9. Coordination and Related Legislation. The Department shall coordinate the implementation of Senate Bill 249 with related legislation as appropriate, including Senate Substitute 1 for Senate Bill 161 and its licensure framework, by incorporating other provisions by reference where suitable, and shall continue to

coordinate with the Office of the Governor throughout the regulatory and implementation process.

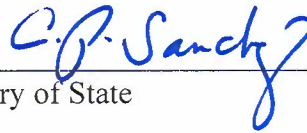
10. **Construction.** Nothing in this Order shall be construed to require any action inconsistent with Senate Bill 249 or other applicable law, to create any right or benefit, substantive or procedural, enforceable at law or in equity against the State, its agencies, or any person, or to limit the authority of the Department or any official under existing law. This Order shall be implemented consistent with applicable law and subject to the availability of appropriations.

APPROVED this 30th day of September, 2026.



Matthew Meyer
Governor

ATTEST:



Secretary of State

