



SPONSOR: Rep. Bolden & Rep. Dukes & Sen. Henry & Sen. Lopez

HOUSE OF REPRESENTATIVES
149th GENERAL ASSEMBLY

HOUSE BILL NO. 211

AN ACT TO AMEND TITLE 16 OF THE DELAWARE CODE RELATING TO ENLARGEMENT OF THE COMPOSITION AND SCOPE OF HEALTH INFORMATION AVAILABLE TO THE DRUG OVERDOSE FATALITY REVIEW COMMISSION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 12, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1210. Definitions.

As used in this subchapter:

(3) "Legitimate public health purpose" means a population-based activity or individual effort primarily aimed at the prevention of injury, disease, or premature mortality or the promotion of health in the community, including all of the following:

a. Assessing the health needs of the community through public health surveillance and epidemiological research;

b. Developing public health policy;

c. Responding to public health needs and emergencies;

d. Review by the Child Death Review Commission or the Child Protection Accountability Commission; ~~and~~

e. Requests for hospital records by the Division of Long Term Care Residents' Protection pursuant to § 1212 of this title.

f. Review by the Drug Overdose Fatality Review Commission.

§ 1211. Use of protected health information.

(a) Protected health information collected by the Department of Health and Social Services or its agencies, the Child Death Review Commission, ~~and~~ the Child Protection Accountability Commission, and the Drug Overdose Fatality Review Commission shall be used solely for legitimate public health purposes.

§ 1212. Disclosure of protected health information.

(d) Disclosure without informed consent. — Protected health information may be disclosed without the informed consent of the individual who is the subject of the information where such disclosures are made:

(10) For patient treatment and care coordination, defined as the provision, coordination, or management of health-care and related services by 1 or more health-care providers, including the coordination or management of health care by a health-care provider with a third party; consultation between health-care providers relating to a patient; or the referral of a patient for health care from 1 health-care provider to another; or

(11) To a health plan, health-care clearinghouse, business associate, or health-care provider, as each is defined by 45 C.F.R. Part 160, to use only in accordance with federal law for transactions that transmit information between 2 parties to carry out financial or administrative activities related to health care, health-care operations, and health insurance, as set forth in 45 C.F.R. Parts 160, 162, and 164; or

(12) To the Drug Overdose Fatality Review Commission.

Section 2. Amend Chapter 47, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4798. The Delaware Prescription Monitoring Program.

(l) The Office of Controlled Substances shall maintain procedures to ensure that the privacy and confidentiality of patients and patient information collected, recorded, transmitted, and maintained is not disclosed, except as provided for in this section.

(2) The Office of Controlled Substances may provide data in the prescription monitoring program in the form of a report to the following persons:

m. The Drug Overdose Fatality Review Commission in furtherance of its duties and responsibilities set forth in § 4799C of this title.

§ 4799B. Organization and composition.

(a) The following persons, or their designees, shall be members of the Drug Overdose Fatality Review Commission ("the Commission") by virtue of position:

~~(3) The Delaware Medical Examiner.~~ The Director of the Delaware Division of Forensic Science.

(6) The Commissioner of the Delaware Department of Corrections.

§ 4799C. Powers and duties.

(c) In connection with any review, the Commission and regional review teams shall have the power and authority to:

(1) Administer oaths; and

(2) Compel the attendance of witnesses whose testimony is related to the overdose death under review and the production of any records related to the death or pertinent to the Commission's investigation, through the use of process issued by the Department of Justice pursuant to § 2508 of Title 29.

Section 3. Amend Section 5161, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 5161. Rights of patients in mental health hospitals or residential centers.

(b) Any hospital or residential center that admits persons pursuant to Chapter 50, 51, or 55 of this title shall prominently post in English and Spanish the list of patient rights set forth in this subsection. In addition to the posting, the Department shall distribute a copy of the list to each patient and to other persons, as provided in Department regulations. Each patient shall have the rights listed below, which shall be liberally construed to fulfill their beneficial purposes. Furthermore, in defining the scope or extent of any duty imposed by this section, higher or more comprehensive obligations established by otherwise applicable federal, state, or local enactments as well as certification standards of accrediting agencies may be considered.

(13) The hospital or residential center shall maintain a clinical record for each patient admitted. The clinical record shall contain complete information on all matters relating to the admission, legal status, care and treatment of the patient, and shall include all pertinent documents relating to the patient. Copies of informed consent forms signed by patients or guardians pursuant to paragraph (b)(8)d. of this section shall be kept with each patient's ward chart. The Department shall, by regulation, determine the scope and method of recording information maintained on the clinical records. Those regulations shall ensure the completeness and accuracy of data pertaining to admission, legal matters affecting the patient, records and notations of the course of care and treatment, therapies, the patient's progress if in research and adverse or other reactions thereto, restrictions on the patient's rights, periodic examinations and other information required by the Department.

No information reported to the Department and no clinical records maintained with respect to patients shall be public records. Such information and records shall not be released to any person or agency outside of the Department except in conformity with existing law and as follows:

h. As requested by the Child Death Review Commission, ~~or the~~ Child Protection Accountability Commission, or the Drug Overdose Fatality Commission pursuant to an investigation or review; and

SYNOPSIS

Section one of this Act would grant access to data from the prescription monitoring program to the Drug Overdose Fatality Review Commission, which would significantly enhance the Commission's ability to meet its statutory duties. In addition, this section of the amendment broadens the pool of individuals from the Division of Forensic Science who may be designated as members to the Commission. This section of the amendment also clarifies the scope of records that may be

compelled for production by the Commission. Sections two and three of this Act allows the Drug Overdose Fatality Review Commission to obtain and review medical records, including mental health and substance abuse records, in furtherance of its statutory duties and in compliance with Delaware's privacy and confidentiality laws.