

CHAPTER 32
FORMERLY
HOUSE BILL NO. 104
AS AMENDED BY
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 16 OF THE DELAWARE CODE RELATING TO THE BEHAVIORAL AND MENTAL HEALTH COMMISSION.

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

Section 1. Amend Subchapter VIII, Chapter 51, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

§ 5191-~~Behavioral and Mental Health Commission.~~[Reserved].

~~(a) There is established a Behavioral and Mental Health Commission, referred to in this subchapter as the "Commission."~~

~~(b) The Commission shall provide oversight of the State's behavioral and mental health system and analyze current behavioral and mental health system gaps.~~

~~(c) The Commission shall periodically report to the General Assembly, on a schedule to be determined by the Commission, to recommend any potential legislative action that ensures quality delivery and expanded access to behavioral healthcare.~~

§ 5192-~~Organization and composition of the Commission.~~[Reserved].

~~(a) The Commission shall be composed of 26 members, as follows:~~

~~(1) Nine individuals, or their designees, who are members of the Commission by virtue of their respective positions, as follows:~~

~~a. The Secretary of the Department of Health and Social Services.~~

~~b. The Director of the Division of Public Health.~~

~~c. The Director of the Division of Medicaid and Medical Assistance.~~

~~d. The Director of the Division of Substance Abuse and Mental Health.~~

~~e. The Secretary of the Department of Services for Children, Youth, and Their Families.~~

~~f. The Secretary of the Department of Correction.~~

~~g. The Secretary of the Department of Education.~~

~~h. The Director of the Division of Prevention and Behavioral Health Services.~~

~~i. The Insurance Commissioner.~~

~~(2) Thirteen individuals who are members of the Commission by appointment by the Governor, as follows:~~

~~a. Two practicing or retired physicians or psychiatrists with experience in behavioral health treatment in this State.~~

~~b. A practicing or retired individual licensed or previously licensed under Chapter 19 of Title 24 with experience in behavioral health treatment in this State.~~

~~e. A practicing or retired social worker with experience in behavioral health treatment in this State.~~
~~d. A representative of an organization with experience providing chemical dependency and addiction treatment in this State.~~

~~e. Two advocates from statewide or national nonprofit organizations that are dedicated to the improvement of behavioral and mental health services in this State.~~

~~f. One representative of a hospital located in New Castle County and 1 representative of a hospital located in Kent County or Sussex County.~~

~~g. A representative of the protection and advocacy agency, as defined in § 5181 of this title.~~

~~h. Two representatives of the behavioral and mental health peer community who have been trained to provide peer recovery support to individuals with behavioral and mental health conditions. For purposes of this paragraph, "peer recovery support" means services delivered by trained individuals who have personal experience with mental illness and recovery to help people develop skills in managing and coping with symptoms of illness, self-advocacy, and identifying and using natural supports.~~

~~i. A member of the public.~~

~~(3) A member of the Senate majority caucus and a member of the Senate minority caucus, appointed by the President Pro Tempore of the Senate.~~

~~(4) A member of the House majority caucus and a member of the House minority caucus, appointed by the Speaker of the House of Representatives.~~

~~(b) Terms of commission members. — Members of the Commission appointed under paragraph (a)(2) of this section shall each serve for a term of 2 years, and may be reappointed by the Governor for 2 additional 2-year terms.~~

~~(c) Commission Chair. — The Commission shall, by affirmative vote of a majority of all members of the Commission, appoint a Chair from its membership for an initial term of 1 year. The Chair may be reappointed, by affirmative vote of a majority of all members of the Commission, for 2 additional 2-year terms.~~

~~(d) The Medical Society of Delaware, the Delaware Healthcare Association, the Delaware Nurses Association, the Delaware Board of Clinical Social Work Examiners, and the Delaware Board of Mental Health and Chemical Dependency Professionals, and other behavioral and mental health-related boards, services, and advocacy organizations in this State may each recommend individuals to the Governor for consideration of appointment to the Commission.~~

~~§ 5193 Freedom of Information Act applicability to the Commission; intent. — [Reserved].~~

~~The Commission is a "public body," as defined in and for purposes of the Freedom of Information Act, Chapter 100 of Title 29, except for the activities of the Adult Mental Health Peer Review Subcommittee established under § 5194 of this title.~~

~~§ 5194 Adult Mental Health Peer Review Subcommittee Commission; purpose, formation, governance.~~

~~(a) For the purposes of this section:~~

~~(1) "Designated psychiatric treatment facility" means as defined in § 5001 of this title.~~

(2) "Serious and persistent mental illness" means a diagnosable mental, behavioral, or emotional disorder of sufficient duration to meet diagnostic criteria and that has been manifest in the last year, has resulted in functional impairment which substantially interferes with or limits 1 or more major life activities, and has episodic, recurrent, or persistent features.

~~(3) "Settlement agreement" means the agreement between this State and the United States Department of Justice dated July 6, 2011, in Civil Action Number 11-591 in the United States District Court for the District of Delaware.~~

(4) "Treatment facility" means as defined in § 5181 of this title.

(b) There is established an Adult Mental Health Peer Review ~~Subcommittee of the~~ Commission, referred to in this subchapter as the "~~Peer Review Subcommittee~~ Commission." The ~~Peer Review Subcommittee~~ Commission shall provide peer review ~~and oversight~~ of matters relating to the provision of behavioral and mental health services in this State to adult individuals with serious and persistent mental illness and shall advise the Secretary of the Department of Health and Social Services accordingly.

(c) The scope of the ~~Peer Review Subcommittee's~~ Commission's authority and review is expressly limited to review of the provision of behavioral and mental health services to those adult individuals who meet all of the following criteria:

~~(1) Meet the target population criteria set forth in the settlement agreement, as determined by the Secretary of the Department of Health and Social Services in consultation with the Peer Review Subcommittee Commission.~~

(2) Are diagnosed with a serious and persistent mental illness.

(3) Meet 1 or more of the following additional criteria:

a. Have had an admission to the Delaware Psychiatric Center or to a private institution for mental disease in the last 2 years.

b. Have had 1 or more emergency room visits in the last year due to mental illness or substance abuse.

c. Have been arrested, incarcerated, or had any other encounter with the criminal justice system in the last year due to conduct related to serious and persistent mental illness.

d. Have been homeless for 1 year or had 4 or more episodes of homelessness in the last 3 years.

(d) ~~Peer Review Subcommittee~~ Commission Membership; Governance. —

(1) The ~~Peer Review Subcommittee~~ Commission shall be ~~comprised of a minimum of 7 and a maximum of 11 of the members of the Commission, as follows:~~ composed of the following members:

a. The Secretary of the Department of Health and Social Services, or the Secretary's designee, who shall serve as a Co-Chair of the ~~Peer Review Subcommittee~~ Commission.

b. The Director of the Division of Substance Abuse and Mental Health, or their designee.

c. The Director of the Division of Medicaid and Medical Assistance, or their designee.

~~e. The representative of the protection and advocacy agency appointed to the Commission under § 5192(a)(2)g. of this title.~~

~~d. Up to 8 additional members from the membership of the Commission appointed by the Chair of the Commission, with the approval of the Secretary of the Department of Health and Social Services.~~

d. A representative of the protection and advocacy agency as defined in § 5181(7) of this title.

e. A representative of the Delaware Psychiatric Society.

f. A representative of the Delaware Psychological Association.

g. A representative from the Mental Health Association.

h. A representative from the National Alliance on Mental Illness in Delaware.

i. A representative from the Ability Network of Delaware.

j. Two representatives of the behavioral and mental health peer community who have been trained and certified to provide peer recovery support to individuals with behavioral and mental health conditions by appointment by the Governor. For the purpose of this paragraph, "peer recovery support" means services delivered by trained and certified individuals who have personal experience with mental illness and recovery to help people develop skills in managing and coping with symptoms of illness, self-advocacy, and identifying and using natural supports.

(k) A representative from the Delaware Healthcare Association.

(2) The Department of Justice shall advise the Secretary of the Department of Health and Social Services on all questions relating to the nature and scope of peer review privilege relating to the ~~Peer Review Subcommittee's~~ Commission's activities.

(3) To the extent possible, at least 50% of the members of the ~~Peer Review Subcommittee~~ Commission must be mental health clinicians licensed to practice in this State, at least 1 of whom must be a licensed physician.

(4) The ~~Peer Review Subcommittee~~ Commission shall, by affirmative vote of a majority of all members of the ~~Peer Review Subcommittee of the Commission~~, appoint a Co-Chair from among the licensed physicians in its membership on an annual basis.

(5) A quorum of the ~~Peer Review Subcommittee~~ Commission consists of a majority of the currently serving members of the ~~Subcommittee~~ Commission.

(6) The ~~Peer Review Subcommittee~~ Commission shall establish bylaws consistent with the requirements of this section, and subject to approval of the Secretary of the Department of Health and Social Services.

(e) Confidential treatment of records and meetings of the ~~Peer Review Subcommittee~~ Commission.

(1) The ~~Peer Review Subcommittee~~ Commission is not a "public body," as defined in and for purposes of the Freedom of Information Act ("FOIA"), Chapter 100 of Title 29.

(2) The meetings of the ~~Peer Review Subcommittee~~ Commission are closed to the public unless otherwise determined by the Chair of the ~~Peer Review Subcommittee~~ Commission, ~~except that the Peer Review Subcommittee shall hold at least 2 public meetings per year to receive comment on the general state of adult behavioral and mental health care in this State.~~

(3) The ~~Peer Review Subcommittee~~ Commission shall provide an annual report to the General Assembly containing recommendations for improvements to behavioral and mental health services provided to adult individuals with a serious and persistent mental illness who may be at risk for psychiatric hospitalization.

(4) Any document received or generated by the ~~Peer Review Subcommittee~~ Commission is not a "public record" as defined in and for purposes of FOIA, and is confidential under § 1768(b) of Title 24. Notwithstanding the foregoing, documents received from the public at, agendas for, or minutes of the ~~Peer Review Subcommittee's~~ Commission's public meetings shall, following appropriate legal review for confidentiality and privacy requirements, be a "public record" as defined in and for purposes of FOIA.

(5) The ~~Peer Review Subcommittee~~ Commission is a "peer review committee" under § 1768(a) of Title 24.

(f) Nothing in this subchapter shall give rise to any right, entitlement, or private cause of action for civil damages or injunctive relief for any public or private party.

(g) *Reporting Obligations of the Department of Health and Social Services.* — The Department of Health and Social Services shall do all of the following:

(1) Provide the ~~Peer Review Subcommittee~~ Commission with all critical incident reports and death reports in the Department's possession related to behavioral and mental health-care services to adult individuals meeting the criteria in subsection (c) of this section and provided by a service provider, including services received in the community at a designated psychiatric treatment facility or at a treatment facility.

(2) Provide the ~~Peer Review Subcommittee~~ Commission with copies of all investigations and reports, including root cause analyses and corrective action plans generated by the Department or any service provider who has a contract with the Department to provide behavioral and mental health services related to a critical incident report or death report of an adult individual meeting the criteria in subsection (c) of this section.

(h) The ~~Peer Review Subcommittee~~ Commission may not direct, nor interfere with, any State agency or service provider's internal review process for investigating and evaluating critical incidents and deaths.

(i) The ~~Peer Review Subcommittee~~ Commission may not direct Department of Health and Social Services resources, personnel, or activities, but may provide advice and recommendations to the Department as the ~~Peer Review Subcommittee~~ Commission determines to be appropriate.

Approved June 5, 2019