

CHAPTER 411
FORMERLY
SENATE BILL NO. 245
AS AMENDED BY
SENATE AMENDMENT NO. 1

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

WHEREAS, recent healthcare system changes have resulted in shifts in behavioral and mental healthcare access and insurance coverage for inpatient and outpatient care; and

WHEREAS, in 2015, the 148th General Assembly passed Senate Concurrent Resolution No. 29 to establish the Behavioral and Mental Health Task Force (“Task Force”) to examine changes in the provision of behavioral and mental health services in this State; and

WHEREAS, the Task Force met a total of 7 times, and included public comment, in an effort to better understand the complex challenges that exist in behavioral and mental health; and

WHEREAS, the Task Force submitted a report on May 31, 2016, which identified gaps in behavioral and mental healthcare in this State and provided recommendations for improving and aligning systems in order to expand access to quality care; and

WHEREAS, the Task Force found that 9,000 children live with serious mental health conditions and 29,000 adults live with serious mental illness in this State; and

WHEREAS, the Task Force, in its report, recommended the formation of a Behavioral and Mental Health Commission (“Commission”) to further evaluate the state of behavioral and mental healthcare in this State; and

WHEREAS, the creation of a Commission will provide oversight of the State’s behavioral and mental health system and provide recommendations on strategies for expanding access to quality care; and

WHEREAS, the Commission will permit the State to continue its ongoing efforts to ensure that individuals with serious and persistent mental illnesses are treated in appropriate settings and with appropriate resources; and

WHEREAS, the Commission will be empowered, among other things, to provide ongoing independent review, monitoring, advice, and critique of the provision of behavioral and mental healthcare in this State; and

WHEREAS, the Commission shall establish a subcommittee, called the Adult Mental Health Peer Review Subcommittee, to provide ongoing oversight and monitoring of the treatment of adult individuals with serious and persistent mental illness who may be at risk of unnecessary institutionalization, consistent with the requirements of the Americans With Disabilities Act; and

WHEREAS, the Commission will be composed of numerous stakeholders, including both the executive branch agencies and community organizations that serve individuals with behavioral and mental health issues;

NOW, THEREFORE,

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

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

Subchapter VIII. Behavioral and Mental Health Commission.

§ 5191. Behavioral and Mental Health Commission.

(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.

(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.
- c. 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 non-profit 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 one 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 Title 16.
- 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.

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; purpose, formation, governance.

(a) For the purposes of this section:

(1) “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.

(2) “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.

(3) “Treatment facility” means as defined in § 5181 of Title 16.

(4) “Designated psychiatric treatment facility” means as defined in § 5001 of Title 16.

(b) There is established an Adult Mental Health Peer Review Subcommittee of the Commission, referred to in this subchapter as the “Peer Review Subcommittee”. The Peer Review Subcommittee 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 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.

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

(3) Meet one 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 Membership; Governance.

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

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.

b. The Director of the Division of Substance Abuse and Mental Health.

c. 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.

(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 activities.

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

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

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

(6) The Peer Review Subcommittee 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.

(1) The Peer Review Subcommittee 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 are closed to the public unless otherwise determined by the Chair of the Peer Review Subcommittee, 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 healthcare in this State.

(3) The Peer Review Subcommittee 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 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 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 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 with all critical incident reports and death reports in the Department’s possession related to behavioral and mental healthcare 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 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 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 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 determines to be appropriate.

Approved September 06, 2016