

CHAPTER 368
FORMERLY
SENATE BILL NO. 231
AS AMENDED BY
SENATE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 16 OF THE DELAWARE CODE RELATING TO THE DELAWARE HEALTH INFORMATION NETWORK.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each house thereof concurring therein):

Section 1. Amend §9920(a), Title 16 of the Delaware Code by deleting “under the direction and control of the Delaware Health Care Commission (“Commission”)” and substituting in lieu thereof “which is a not for profit body both politic and corporate, which shall have the rights, obligations, privileges and purpose” and by inserting a new sentence at the end of §9920(a) as follows: “The DHIN shall be the State’s sanctioned provider of health information exchange services.”

Section 2. Amend §9921(a), Title 16 of the Delaware Code by deleting in the first sentence the words “at least 13 and not more than 21” and inserting in lieu thereof “19” and by deleting the second, third and fourth sentences thereof and inserting in lieu thereof the following: “It is intended that the membership of the Board include individuals with various business, technology and healthcare industry skills committed to managing the Corporation in an efficient, effective and competitive manner. The Board shall be comprised of the following members:

1. The Director of the Office of Management and Budget or his/her designee;
 2. The Chief Information Officer of the Department of Technology and Information or his/her designee;
 3. The Secretary of the Department of Health and Social Services or his/her designee;
 4. The Controller General or his or her designee;
 5. Six (6) members, appointed by the Governor, including at least one person who shall represent the interests of medical consumers and at least three with experience and/or expertise in the healthcare industry;
 6. Three (3) members appointed by the Governor representing hospitals or health systems;
 7. Three (3) members appointed by the Governor representing physicians;
 8. One (1) member appointed by the Governor representing businesses or employers;
- and
9. Two (2) members appointed by the Governor representing health insurers or health plans.

The Chair of the Board shall be elected from among its members by a majority of the Directors and shall serve a three year term. Each member shall serve a three year term, with such initial terms being staggered as set by the Governor and each member continuing to serve beyond such term until a successor is appointed. Any member absent without adequate reason for 3 consecutive meetings, or who fails to attend at least half of all regular business meetings during any calendar year, may be removed from the Board with the approval of the Governor upon a recommendation from the Board. The Board, the Delaware Healthcare Association, the Medical Society of Delaware, Delaware State Chamber of Commerce, and other interested organizations may make non-binding recommendations to the Governor for appointments to the Board.”

Section 3. Amend §9921(b) Title 16 of the Delaware Code by deleting it in its entirety and re-designating the subsequent sub-sections accordingly.

Section 4. Amend §9921(c), Title 16 of the Delaware Code by deleting “The Commission and other appointing authorities are authorized to appoint State officers and employees and other individuals to the Board, and no” and substituting in lieu thereof “No”; by deleting “construed” and substituting in lieu thereof “deemed”; and by inserting at the end of subsection (c) the following “Members of the Board who are serving

upon the effective date of this legislation shall continue to serve until a successor is appointed by the Governor or otherwise designated by the ex officio members.”

Section 5. Amend §9921(e), Title 16 of the Delaware Code by deleting that subsection in its entirety.

Section 6. Amend §9922(a)(1), Title 16 of the Delaware Code by inserting “and maintain” between “Develop” and “a community”.

Section 7. Amend §9922(a)(3), Title 16 of the Delaware Code by deleting “Commission” and inserting in lieu thereof “Governor and General Assembly” and by deleting §9922(a)(4) in its entirety and inserting §9922(a)(4) thru §9922(a)(19) as follows:

“(4) Adopt bylaws to govern the conduct of its affairs and to carry out and discharge its powers, duties and functions and to adopt policies as appropriate to carry out and discharge its powers, duties, and functions, and to sue, but not be sued, to enter into contracts and agreements and to plan, control facilities and such real and personal property as it may deem necessary, convenient or desirable without applications of the provisions of Chapters 59, 69, or 70, Title 29 of the Delaware Code.

(5) All prior regulations and rules promulgated by the Delaware Health Care Commission regarding the DHIN shall remain in full force and effect until the DHIN replaces the aforementioned regulations and rules with bylaws and/or policies.

(6) The bylaws shall include a provision pertaining to conflicts of interest and that Board members, staff, committee members and others conducting business or associated with the DHIN shall be required to sign conflict of interest statements.

(7) To have and exercise any and all powers available to a corporation organized pursuant to Chapter 1 of Title 8, the Delaware General Corporation Law.

(8) To employ such personnel and provide such benefits as necessary to carry out its functions and to retain by contract engineers, advisors, and other providers of advice, counsel and services which it deems advisable or necessary in the exercise of its purposes and powers and upon such terms as it deems appropriate.

(9) To exercise all of the power and the authority with respect to the operation, development and maintenance of the DHIN.

(10) To do all acts and things necessary or convenient to carry out its functions, including without limitation, the authority to open and operate separate bank accounts in the name of the DHIN.

(11) To collect, receive, hold and disburse funds in accordance with the needs of the DHIN, including user fees set by the DHIN.

(12) Implement and operate a statewide integrated health information network to enable communication of clinical and financial health information, and other information and other related functions as deemed necessary by the Board.

(13) Promote efficient and effective communication among Delaware health care providers and stakeholders including hospitals, physicians, state agencies, payers, employers, and laboratories.

(14) Promote efficiencies in the healthcare delivery system.

(15) Provide a reliable health information exchange to authorized users.

(16) Work with governments and other states to integrate into or with the DHIN and/or assist them in providing regional integrated health information systems.

(17) Work towards improving the quality of health care and the ability to monitor community health status and facilitate health promotions by providing immediate and current outcome, treatment and cost data and related information so that patients, providers and payers can make informed and timely decisions about health care.

(18) The DHIN shall make annual reports to the Governor and Members of the General Assembly setting forth in detail its operations and transactions, which shall include annual audits of the books and accounts of the DHIN made by a firm of independent certified public accountants mutually agreed to by the Auditor of Accounts and the Director of the Office of Management and Budget.

(19) Perform any and all other activities in furtherance of the above.”

Section 8. Amend §9922(b), Title 16 of the Delaware Code by deleting it in its entirety and inserting in lieu thereof the following:

“(b) To carry out the above duties, the DHIN is granted all incidental powers, without limitation, including the following:

(1) To contract with sufficient third parties and/or employ non-state employees, without applications of the provisions of Chapters 59, 69, or 70, Title 29 of the Delaware Code respectively;

(2) To establish a non-appropriated special funds account in its budget in order to receive gifts and donations;

(3) To establish reasonable fees or charges for provision of its services to non-participant third parties; and

(4) To sell or license any copyrighted or patented intellectual property.”

Section 9. Amend §9923(a), Title 16 of the Delaware Code by deleting “and all members of the Commission”; by deleting “aforementioned committees” and substituting in lieu thereof “DHIN”; and by deleting “and the Commission”.

Section 10. Amend §9923(b), Title 16 of the Delaware Code by inserting “or entity” between “person” and “who”; and by deleting “as approved by the Commission”; and by deleting “, which provides an essential” and substituting in lieu thereof “as the State’s sanctioned provider of health information services that are deemed to be essential to”.

Section 11. Amend §9924(a) and (b), Title 16 of the Delaware Code by deleting “Commission” and substituting in lieu thereof “DHIN” in each section.

Section 12. Amend §9925(a), Title 16 of the Delaware Code by deleting “Commission” and substituting in lieu thereof “DHIN” and by inserting “All prior regulations and rules promulgated by the Delaware Health Care Commission in regards to the DHIN shall remain in full force and effect until amended or repealed by the DHIN” at the end of subsection (a).

Section 13. Amend §9925(b) and (c), Title 16 of the Delaware Code by deleting “Commission” and substituting in lieu thereof “DHIN” in each subsection.

Section 14. Amend §9926(a), (b) and (c) Title 16 of the Delaware Code by deleting “Commission” and substituting in lieu thereof “DHIN” in each subsection.

Section 15. Upon the effective date of this bill, all DHIN related tangible and intangible assets shall transfer from the Commission to DHIN without consideration and all existing DHIN related contracts with the Commission shall transfer to DHIN.

Section 16. Amend Title 16 of the Delaware Code by re-designating Subchapter IV of Chapter 99 as Chapter 103 and re-designating §§9920-9927 as §§ 10301-10308 accordingly and deleting “Delaware Healthcare Commission” from the heading and replacing it with “Delaware Health Information Network.”

Section 17. It is the intent of the General Assembly that the DHIN will over a period of time adopt a more traditional corporate model in which the Board, for example, will retain the services of a Chief Executive Officer as the principal officer of the DHIN, with staff employed directly by the DHIN. To that end, the DHIN shall report on its progress in that regard six months after the effective date of this legislation. In consultation with the Chief Executive Officer, the DHIN will produce a business plan for the DHIN, that outlines in detail how the sustainability and viability of the DHIN, with such plan be presented to the Governor and the General Assembly within six months of retaining the CEO.

Section 18. This legislation shall be effective January 1, 2011, at which time all tangible and intangible assets shall transfer from the Commission to DHIN without consideration and all existing contracts with the Commission shall transfer to DHIN.

Approved July 12, 2010