

LAWS OF DELAWARE
VOLUME 84
CHAPTER 10
152nd GENERAL ASSEMBLY
FORMERLY
HOUSE BILL NO. 52

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO THE ADULT CORRECTION HEALTHCARE REVIEW COMMITTEE.

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

Section 1. Amend § 6518, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 6518. Adult Correction Healthcare Review Committee.

(a) The Adult Correction Healthcare Review Committee (Committee) is hereby established.

(b) For administrative and budgetary purposes, the Committee shall be placed within the Criminal Justice Council. The Criminal Justice Council shall provide fiscal oversight as determined by the Executive Director of the Criminal Justice Council. Staff of the Committee are under the authority of and subject to the oversight and supervision of the Executive Director of the Criminal Justice Council.

(c) The Committee shall consist of ~~8~~ 9 voting members, appointed by the Governor and confirmed by the Delaware State Senate which shall include all of the following:

(1) A Delaware licensed physician.

(2) A Delaware licensed ~~psychiatrist~~ or forensic psychologist.

(3) A Delaware licensed psychologist.

(4) A Delaware licensed registered nurse.

(5) A member of the Delaware Bar.

(6) An expert in the field of substance abuse treatment.

(7) Any additional healthcare professional who by virtue of training, education, and specialization holds expertise in correctional healthcare.

(8) An individual representing a nonprofit that is serving the families of inmates or the inmates themselves, or a local civil rights organization.

(9) A Delaware licensed psychiatrist.

(d) The Committee shall also consist of the following 3 nonvoting ex-officio members:

(1) The Chief of the Bureau of Healthcare, Substance Abuse, and Mental Health Services.

(2) Chairperson of the House Corrections Committee.

(3) Chairperson of the Senate Corrections and Public Safety Committee.

(e) Voting members shall be appointed for a term of 3 years.

(f) No member of the committee other than those designated in subsection (d) of this section may be an employee of the Department of Correction or a contractor providing medical services under the direction of the Department of Correction.

(g) Nonvoting ex-officio members may designate another individual to attend Committee meetings. The nonvoting ex-officio members identified in paragraphs (d)(2) and (d)(3) of this section may only designate a member of their respective corrections committees.

(h) Members shall receive no salary for their service, but may be reimbursed for reasonable expenses incurred in their work for the commission.

(i) Five voting members of the Committee must be present to constitute a quorum.

(j) The Medical Society of Delaware, the Delaware Psychiatric Society, the Delaware Psychological Association, the Delaware Nurses Association, and the Delaware State Bar Association, may submit recommendations to the Governor for consideration of appointment.

(k) The chair of the Committee shall be elected annually by majority vote of the voting Committee members.

(l) The Committee serves in an advisory capacity to the Governor, the General Assembly, and the Commissioner of the Department of Correction on all matters in Delaware's adult correction system relating to the provision of inmate health-care services, the review of all inmate deaths and autopsies relating to those deaths, the construction of health-care contracts that provide inmate health-care services, and the review of all statistics relating to inmate health care.

(m) The Committee shall not be considered a public body as defined at § 10002 of Title 29.

(n) The Committee shall do all of the following:

(1) Perform advisory reviews of medical records and autopsies of inmates who have died while incarcerated.

(2) Review and monitor the quality and appropriateness of health-care services rendered in Delaware's adult correctional facilities.

(3) Review critical incident and mortality and morbidity review reports.

(4) Receive and review monthly summaries of inmate, staff, public, and other health-care related grievances and the resolutions of these grievances in order to be fully appraised of the state of health-care services in Delaware's adult correction facilities.

(5) Receive and review monthly reports of inmate hospital admissions and infectious disease diagnoses, such as hepatitis C, tuberculosis, human immunodeficiency virus (HIV), methicillin resistant staphylococcus aureus (MRSA), and meningitis, from all adult correction facilities.

(6) Have access to any and all otherwise protected health-care information relating to current and former inmates supervised by the Department of Correction notwithstanding any other statute to the contrary.

(7) Advise the Governor, the General Assembly, and the Commissioner of the Department of Correction on any other matters relating to adult inmate health care that the Committee considers reasonable and worthwhile including all of the following:

- a. Assurance that all inmates receive appropriate and timely services in a safe environment.
- b. Systematic monitoring of the treatment environment.
- c. Assisting in the reduction of professional and general liability risks.
- d. Enhancing efficient utilization of resources.
- e. Assisting in credential review.
- f. Enhancing the identification of continuing educational needs.
- g. Facilitating the identification of strengths, weaknesses, and opportunities for improvement.
- h. Facilitating the coordination and integration of information systems.
- i. Assuring the resolution of identified problems.
- j. Changes considered necessary by the Committee.

(8) By November 30, 2021, provide a report to the Governor, the General Assembly, and the Commissioner of the Department of Correction regarding the efficacy and appropriateness of the Department's response to COVID-19 from March 12, 2020, to March 30, 2021.

a. All of the following shall be included in the report identified in this paragraph (n)(8):

1. The total number of inmates who tested positive for COVID-19.
2. The total number of inmates at each correctional institution who tested positive for COVID-19.
3. The total number of correctional officers who tested positive for COVID-19.
4. The total number of correctional officers at each correctional institution who tested positive for COVID-19.
5. The total number of deaths of inmates and correctional officers due to COVID-19.
6. The strengths, weaknesses, and opportunities for improvement of the Department's response to COVID-19.
7. An assessment of the medical treatment provided to inmates who tested positive for COVID-19.

b. In order to discharge its obligations under this paragraph (n)(8), the Committee may do all of the following:

1. Request records of or the appearance of the Department or any contractor who provided medical services to an inmate from March 12, 2020, to March 30, 2021, relating to COVID-19.
2. Consult with any additional medical professional.
3. Engage additional staff other than the Criminal Justice Council.

c. Any individual who provides services to the Committee under this paragraph (n)(8) must abide by federal and state laws regarding privacy of protected health information. Any person aggrieved by a

violation of this paragraph shall have, in addition to any other rights, a right of action in the Superior Court pursuant to subsection (t) of this section.

(o) The Committee may request the appearance of any contractor providing medical and behavioral health services to an inmate under the direction of the Department of Correction at a Committee meeting in order to provide information to the Committee.

(p) The Committee shall refer to the appropriate licensing board grievance cases in which there is a serious deviation from the community standard of care by a health-care worker or other employee of a prison health-care contractor, if the health-care worker or other employee's profession or occupation is governed under Title 24.

(q) The Department of Correction shall forward copies of National Commission of Correctional Health Care (NCCHC) and American Correctional Association (ACA) surveys, reports, and evaluations to the Committee upon their request. Whenever a survey, evaluation, or similar act is conducted by or on behalf of NCCHC or ACA, the Committee may be contacted and be allowed to contribute to the survey, evaluation, or other activity. The transmission of documents in the possession of the Department of Correction to the Committee shall not be considered a waiver of any statutory or common law privilege.

(r) All of the following shall be provided to the Committee at the Committee's request:

(1) Autopsy reports of inmates who have died while incarcerated within the control of the Department of Safety and Homeland Security.

(2) Evaluations performed by the Delaware Psychiatric Center of an inmate within the control of the Department of Health and Social Services except those records protected by 42 C.F.R. Part 2 [42 C.F.R. § 2.1 et seq.].

(3) Inmate medical and behavioral health services records in the custody of the Department of Correction.

(4) Records of a contractor providing medical and behavioral health services to an inmate under the direction of the Department of Correction.

(s) Any document received or generated by the Committee is hereby specifically excluded from the definition of public record as set forth at § 10002 of Title 29.

(t) All Committee members must abide by federal and state laws regarding privacy of protected health information. In addition any other remedies available under federal and state law, any person aggrieved by a violation of this paragraph shall have a right of action in the Superior Court and may recover for each violation all of the following:

(1) Against any person who intentionally or recklessly violates a provision of this paragraph, damages of \$5,000 or actual damages, whichever is greater.

(2) Reasonable attorneys' fees.

(3) Such other relief, including an injunction, as a court may deem appropriate.

(u) This section is intended only to provide ongoing independent review, monitoring, advice, and critique of the provision of health-care services to inmates within the custody of the Department of Correction. Accordingly,

nothing in this chapter shall give rise to any right, entitlement or a private cause of action for civil damages or injunctive relief for any public or private party.

(v) The Committee shall submit a report by December 31 of each year to the Governor, the General Assembly and the Commissioner of the Department of Correction on the state of inmate health-care services in Delaware's adult correction system by delivering a copy to the Governor, and the Clerks of the House of Representatives and the Senate, and the Commissioner of the Department of Correction.

(w) Notwithstanding any provision of this section to the contrary, for 2021 and 2022, the Chairperson of the House Corrections Committee and the Chairperson of the Senate Corrections and Public Safety Committee shall be voting members of the Committee, but cannot designate another individual to attend Committee meetings or vote.

Approved April 6, 2023