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Sen. Blevins ;
Reps. Ennis, George, Gilligan, Hall-Long, Johnson, Keeley,
Longhurst, Maier, McWilliams, Miro, Mulrooney,
Schwartzkopf, Spence, VanSant, Viola, Wagner, Williams;
Sens. Cloutier, Connor, Henry, Sokola

HOUSE OF REPRESENTATIVES

143rd GENERAL ASSEMBLY

HOUSE BILL NO. 205
AS AMENDED BY
HOUSE AMENDMENT NOS. 1 & 2

AN ACT TO AMEND TITLES 16 AND 18 OF THE DELAWARE CODE RELATING TO HOSPITALS AND
UNIVERSAL NEWBORN AND INFANT HEARING SCREENING.

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

Section 1. Amend Title 16 of the Delaware Code by inserting therein a new chapter as follows:

“Chapter 8A. Universal Newborn and Infant Hearing Screening.

§ 801A. Short title.

This Chapter shall be known and may be cited as the “Universal Newborn and Infant Hearing Screening
Act”.

§ 802A. Legislative findings and purpose.

The General Assembly hereby finds and declares that:

- (1) Significant hearing loss is one of the most common major abnormalities present at birth and, if undetected, will impede the child’s speech, language, and cognitive development.
- (2) Screening by high-risk characteristics alone (e.g., family history of deafness) only identifies approximately 50% of newborns with significant hearing loss.
- (3) Reliance solely on physician and/or parental observation fails to identify many cases of significant hearing loss in newborns and infants.
- (4) There is evidence that children with hearing loss, who are identified at birth and receive intervention services shortly thereafter, have significantly better learning capacity than children who are identified with hearing loss later than six months after birth.

- (5) Legislation is needed to provide for the early detection of hearing loss in newborns and infants and to prevent or mitigate the developmental delays associated with late identification of hearing loss.

§ 803A. Definitions.

For the purposes of this Chapter:

- (1) “Child” means a person up to 21 years of age.
- (2) “False positive rate” means the proportion of infants identified as having a significant hearing loss by the screening process who are ultimately found to not have a significant hearing loss.
- (3) “False negative rate” means the proportion of infants not identified as having a significant hearing loss by the screening process who are ultimately found to have a significant hearing loss.
- (4) “Health Care Insurer” means any entity regulated by the Insurance Commissioner, including, but not limited to, health care insurers; health, hospital or medical service plan corporations; or health maintenance organizations. Health care insurer does not include self-insured plans or groups regulated by the Employment Retirement Income Security Act of 1974 (“ERISA”), to the extent that state regulation of such plans is preempted by ERISA.
- (5) “Health Insurance Policy” means any health insurance policy, contract, plan, or evidence of coverage issued by a health care insurer, which provides medical coverage on an expense incurred, service or prepaid basis.
- (6) “Hearing screening test” means automated auditory brain stem response, otoacoustic emissions, or another appropriate screening test approved by the state Division of Public Health.
- (7) “Hospital” means a health care facility or birthing center licensed in this state that provides obstetrical services, or provides inpatient newborn services
- (8) “Infant” means a child who is not a newborn and has not attained the age of one year.
- (9) “Newborn” means a child up to 28 days old.
- (10) “Parent” means a natural parent, stepparent, adoptive parents, guardian, or custodian of a newborn or infant.
- (11) “Significant hearing loss” means a hearing loss equivalent to or greater than a 35-decibel hearing loss (35-dB HL) in the better ear.

§ 804A. Newborn and Infant Hearing Screening Programs.

As a condition of its licensure, each hospital shall establish a Universal Newborn Hearing Screening (UNHS) program. Each UNHS program shall:

- (1) provide a hearing screening test for every newborn born in the hospital, for identification of hearing loss, regardless of whether or not the newborn has known risk factors suggesting hearing loss.
- (2) Develop screening protocols and select screening method(s) designed to detect newborns and infants with a significant hearing loss.
- (3) Provide for appropriate training and monitoring of the performance of individuals responsible for performing hearing screening tests. These individuals shall be trained properly in:
 - a. the performance of the tests,
 - b. the risks of the tests, including psychological stress for the parent(s),
 - c. infection control practices, and
 - d. the general care and handling of newborns and infants in hospital settings.
 - e. perform the hearing testing prior to the newborn's discharge; provided, however, that if the newborn is expected to remain in the hospital for a prolonged period, testing shall be performed prior to the date on which he or she attains the age of three months.
- (4) Perform the hearing testing prior to the newborn's discharge; if the newborn is expected to remain in the hospital for a prolonged period, testing shall be performed prior to the date on which he or she attains the age of three months.
- (5) Develop and implement procedures for documenting the results of all hearing screening tests.
- (6) Inform the newborn's or infant's parents and primary care physician, if one is designated, of the results of the hearing screening test, or if the newborn or infant was not successfully tested. Whenever possible, such notification shall occur prior to discharge; if this is not possible, notification shall occur no later than ten days following the date of testing. Notification shall include information regarding appropriate follow-up for a screening failure or a missed screening, and referral information for confirmatory testing. If a hearing screening test indicates the possibility of a significant hearing loss, the hospital shall ensure that the physician or other person attending the newborn or infant is made aware of the community resources available for confirmatory testing and process of referral to early intervention services.

(7) Collect performance data specified by the Division of Public Health to ensure that each UNHS program is in compliance with this section, including the number of infants born, the proportion of all infants screened, the referral rate, the follow-up rate, the false-positive rate, and the false-negative rate.

a. Testing Performance Standards.

1. Each UNHS program should have a false-positive rate of 5% or less.

2. Each UNHS program should have a false-negative rate of 5% or less.

b. Oversight Responsibility. The Division of Public Health shall exercise oversight responsibility for UNHS programs, including establishing a performance data set and reviewing performance data collected pursuant thereto by each hospital.

§ 805A. Civil and Criminal Immunity and Penalties.

(a) No physician shall be civilly or criminally liable for failure to conduct hearing screening testing.

(b) No physician or hospital acting in compliance with this Chapter shall be civilly or criminally liable for any acts taken in conformity herewith, including without limitation furnishing information required to be furnished hereunder.

(c) A hospital that has not established or implemented an UNHS program in accordance with this Chapter shall be subject to sanction by the Division of Public Health as provided by law for licensure violations.

§ 806A. Confidentiality.

The Division of Public Health and all other persons to whom data is submitted in accordance with this Chapter shall keep such information confidential. No publication or disclosure of information shall be made except in the form of statistical or other studies which do not identify individuals, except as specifically consented to in writing by the parent(s) of a tested child.

§ 807A. Delivery of Policy.

If a health insurance policy provides coverage or benefits to a resident of this state, it shall be deemed to be delivered in this state within the meaning of this Chapter, regardless of whether the health care insurer issuing or delivering said policy is located inside or outside of the state.”

Section 2. Amend Chapter 33, Title 18 of the Delaware Code, by inserting therein a new section as follows:

“§ 3352. Newborn and Infant Hearing Screening; Coverage and Reimbursement.

- (a) Any individual health insurance policy which is delivered, issued for delivery, renewed, extended, or modified in this state by any health care insurer and which provides coverage for a child shall be deemed to provide coverage for hearing loss screening tests of newborns and infants provided by a hospital before discharge.
- (c) The amount of reimbursement for newborn or infant hearing screening provided under such a policy shall be consistent with reimbursement of other medical expenses under the policy, including the imposition of co-payment, coinsurance, deductible, or any dollar limit or other cost-sharing provisions otherwise applicable under the policy.”

Section 3. Amend Chapter 35, Title 18 of the Delaware Code, by inserting therein a new section as follows:

“§ 3568. Newborn and Infant Hearing Screening; Coverage and Reimbursement.

- (a) Any group or blanket insurance health insurance policy which is delivered, issued for delivery, renewed, extended, or modified in this state by any health care insurer and which provides coverage for a child shall be deemed to provide coverage for hearing loss screening tests of newborns and infants provided by a hospital before discharge.
- (c) The amount of reimbursement for newborn or infant hearing screening provided under such a policy shall be consistent with reimbursement of other medical expenses under the policy, including the imposition of co-payment, coinsurance, deductible, or any dollar limit or other cost-sharing provisions otherwise applicable under the policy.”

Section 4. This Act shall become effective 90 days following its enactment into law and shall apply to health insurance policies delivered, issued for delivery, renewed, extended, or modified after said effective date.

Section 5. Nothing in this Act shall be construed to require newborn or infant hearing screening testing for the minor child of any person who is a member of a recognized church or religious denomination and whose religious convictions, in accordance with the tenets and practices of the person’s church or religious denomination, prohibit such testing.