



SPONSOR: Sen. Katz & Rep. Kowalko

DELAWARE STATE SENATE
145th GENERAL ASSEMBLY

SENATE SUBSTITUTE NO. 1

FOR

SENATE BILL NO. 80

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

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

- 1 Section 1. Amend Title 16, of the Delaware Code by adding a Chapter 103 to read as follows:
- 2 “Chapter 103. Delaware Health Consortium/Delaware Health Information Network Corporation.
- 3 § 10301. Definitions
- 4 The following terms and phrases as used in this subchapter shall have the following meanings:
- 5 (1) ‘Board of Directors’ means the Board appointed to manage the Delaware Health Information Network
- 6 Corporation.
- 7 (2) ‘Chair’ means the individual appointed to the Board that is selected by the other Directors to preside over the
- 8 Board.
- 9 (3) ‘Corporation’ means the Delaware Health Information Network Corporation.
- 10 (4) ‘Delaware Health Consortium’ means the Delaware Health Information Network Corporation.
- 11 (5) ‘DHIN’ means the Delaware Health Information Network.
- 12 § 10302. Delaware Health Information Network Corporation-- Policy and purpose.
- 13 The General Assembly declares the following to be the policy and purpose for creation of the Delaware Health
- 14 Information Network Corporation:
- 15 (1) That the continued economic viability of the Delaware Health Information Network and the operation of its
- 16 health information exchange and related operations for the health, safety and welfare benefitting all Delawareans is critical;
- 17 (2) That it is in the best interest of the State to create a corporate entity which shall assume operation of the
- 18 Delaware Health Information Network and its related operations;

19 (3) That this Corporation is intended to have all power and authority necessary to be exercised in accordance with
20 the form of governance expressed herein, to operate the Delaware Health Information Network and related operations so as
21 to maintain and expand the business of these operations.

22 § 10303. Creation of the Delaware Health Information Network Corporation.

23 (a) There shall be established within the Department of Health and Social Services a body corporate and
24 politic, with corporate succession, constituting a public instrumentality of the State, and created for the purpose of
25 exercising essential governmental functions which is to be known as the "Delaware Health Information Network
26 Corporation (Corporation)." This Corporation shall exercise all such functions necessary in connection with the
27 improvement, operation and management of the Delaware Health Information Network (DHIN) and related
28 operations, which shall be deemed and held to be essential governmental functions of this State. The Corporation
29 shall be a membership corporation with the Department of State as sole member and shall have a certificate of
30 incorporation and bylaws consistent with this subchapter. The certificate of incorporation of the Corporation shall
31 provide for approval of the Delaware General Assembly in order to amend the certificate of incorporation, to
32 effect a merger or dissolution of the Corporation or to effect a sale of all or substantially all of the assets of the
33 Corporation.

34 (b) The Corporation shall be governed by a Board of Directors consisting of 17 members. It is the
35 responsibility of the Board to assess the needs of the Corporation to help insure the selection of qualified and
36 capable members who have the necessary skills and vision for the Corporation. It is intended that the membership
37 of the Board include individuals with various business, technology and healthcare industry skills committed to
38 managing the Corporation in an efficient, effective and competitive manner. The Board shall be comprised of the
39 following members:

- 40 1. The Director of the Office of Management and Budget;
- 41 2. The Secretary of the Department of Technology and Information;
- 42 3. The Secretary of the Department of Health and Social Services;
- 43 4. Two (2) members representing business, appointed by the Governor;
- 44 5. Three (3) members appointed by the Delaware Healthcare Association, approved by the Governor;
- 45 6. Three (3) members appointed by the Medical Society of Delaware, approved by the Governor;
- 46 7. Three (3) members of the public, one from each county, appointed by the Governor;
- 47 8. One (1) representative from a Delaware based health insurer, appointed by the Governor; and

48 9. Two (2) representatives from the healthcare industry, appointed by the Governor.

49 (c) The Chair of the Board shall be elected from among its members by a majority of the Directors and
50 shall serve a three year term.

51 (d) To ensure continuity and stability during the transition phase, members of the current Board who
52 are serving when this Bill is enacted and were appointed by an appointing authority designated in this Chapter,
53 shall continue to serve with voting privileges, until a successor is appointed by the designated appointing
54 authority, regardless of term expiration date. However, if no successor is appointed within 6 months of enactment
55 of this Bill, the member shall cease being a member of the Board, regardless of term expiration date.

56 (e) Each non-cabinet Director shall serves a term of 3 years, and may succeed himself or herself for 1
57 additional term; provided, however, that where a member was initially appointed to fill a vacancy, the member
58 may succeed himself or herself for only 1 additional full term. A person appointed to fill a vacancy on the Board
59 holds office for the remainder of the unexpired term of the vacating member. Each term of office expires on the
60 date specified in the appointment; a Board member whose appointment has expired is ineligible to participate in
61 Board proceedings.

62 (f) No Director shall hold any elected or appointed office under the government of the United States or
63 the State or be a candidate for such office except as provided for herein. No Director shall be a family member of a
64 person who holds any current elected or appointed office under the government of the United States or the State or
65 be a candidate for such office.

66 (g) A person who has never served on the Board may be appointed to the Board for 2 consecutive terms;
67 but that person is thereafter ineligible to serve for 2 consecutive appointments. A person who has been twice
68 appointed to the Board or who has served on the Board for 6 years within any 9-year period may not again be
69 appointed to the Board until an interim period of at least 1 term has expired since the person last served.

70 (j) As to the noncabinet Directors, in the event of the death of a Director, permanent disability of a
71 Director, resignation of a Director or failure of a Director to perform their duties, the Governor shall appoint an
72 interim Director to complete the term of the replaced Director.

73 (k) For purposes of conducting business of the Corporation, three-fifths (3/5) of the Directors shall
74 constitute a quorum, except as otherwise provided. A vote of a majority of the total number of Directors shall be
75 required for action on any matter before the Corporation, except as otherwise provided herein.

76 (j) The Governor may suspend or remove a Director for misfeasance, nonfeasance, malfeasance,
77 misconduct, incompetence, or neglect of duty. Any member, who is absent without adequate reason for 3

78 consecutive meetings, or who fails to attend at least half of all regular business meetings during any calendar year,
79 shall be guilty of neglect of duty.

80 § 10304. Appointment of Chief Executive Officer.

81 The Board of Directors shall, subject to the approval of the Governor, appoint a Chief Executive Officer of the
82 Corporation by a two-thirds vote of all Directors. The Chief Executive Officer shall have experience in management and
83 technology and shall be the principal executive officer of the Corporation.

84 § 10305. General Powers.

85 The Corporation shall have upon enactment of this subchapter and upon its creation as provided for herein the
86 powers listed in this subsection. The Corporation shall be empowered, without limitation and notwithstanding any other
87 laws:

- 88 1. Adopt bylaws to govern the conduct of its affairs and to carry out and discharge its powers, duties and functions and
89 to adopt policies as appropriate to carry out and discharge its powers, duties, and functions, and to sue, but not be
90 sued, to enter into contracts and agreements and to plan, control facilities and such real and personal property as it
91 may deem necessary, convenient or desirable without regard to state procurement laws.
- 92 2. All prior regulations and rules promulgated by the Delaware Health Care Commission regarding the DHIN shall
93 remain in full force and effect until the Corporation replaces the aforementioned regulations and rules with bylaws
94 and/or policies or for a period not to exceed 6 months from enactment of this Act.
- 95 3. The bylaws shall include a provision pertaining to conflicts of interest and that Board members, staff, committee
96 members and others conducting business and/or associated with the Corporation, shall be required to sign conflict
97 of interest statements.
- 98 4. To have and exercise any and all powers available to a corporation organized pursuant to Chapter 1 of Title 8, the
99 Delaware General Corporation Law.
- 100 5. To employ such personnel and provide such benefits as necessary to carry out its functions and to retain by
101 contract, engineers, advisors, and other providers of advice, counsel and services which it deems advisable or
102 necessary in the exercise of its purposes and powers and upon such terms as it deems appropriate.
- 103 6. To exercise all of the power and the authority with respect to the operation, development and maintenance of the
104 DHIN.
- 105 7. To do all acts and things necessary or convenient to carry out its functions, including without limitation, the
106 authority to open and operate separate bank accounts in the name of the corporation.

- 107 8. To collect, receive, hold and disburse funds in accordance with the needs of the Corporation, including user fees
108 set by the Corporation.
- 109 9. Implement and operate a statewide integrated health information network to enable communication of clinical and
110 financial health information, and other information and other related functions as deemed necessary by the Board.
- 111 10. Promote efficient and effective communication among Delaware health care providers and stakeholders including
112 hospitals, physicians, state agencies, payers, employers, and laboratories.
- 113 11. Create efficiencies in health care costs by eliminating duplication of health data and improving operational
114 efficiencies in the healthcare delivery system.
- 115 12. Provide reliable health information to health care providers.
- 116 13. Work with the Delaware Department of Health and Social Services, Department of Technology and Information,
117 and Delaware's healthcare community and citizens to integrate public and private health technology and
118 technology infrastructure.
- 119 14. Work towards improving the quality of health care and the ability to monitor community health status and facilitate
120 health promotions by providing immediate and current outcome, treatment and cost data and related information so
121 that patients, providers and payers can make informed and timely decisions about health care.
- 122 15. Work with governments, and other states to integrate into DHIN and/or assist them in providing regional integrated
123 health information systems.

124 § 10306. No pledge of state credit; no assumption of liability by state.

125 The Corporation shall have no power, except where expressly granted by separate act of the General Assembly, to
126 pledge the credit or to create any debt or liability of the State or of any other agency or of any political subdivision of the
127 State, and the State shall not assume or be deemed to have assumed any debt or liability of the Corporation as the result of
128 any exercise of power by the Corporation.

129 § 10307. Contracts

130 Upon enactment of this Bill all tangible and intangible assets shall transfer from the Commission to the
131 Corporation without consideration and all existing contracts with the Commission shall transfer to the Corporation.

132 §10308. Reports and audits.

133 The Corporation shall make annual reports to the Governor and the General Assembly setting forth in detail its
134 operations and transactions, which shall include annual audits of the books and accounts of the Corporation made by a firm
135 of independent certified public accountants (CPA's) mutually agreed to by the Auditor of Accounts and the Secretary of
136 Health and Social Services, and may make such additional reports from time to time as it desires.

137 § 10309. Tax status.

138 The powers and functions exercised by the Corporation are and will be in all respects for the benefit of the people
139 of the State, and to this end, the Corporation will be exercising essential governmental functions. To this end, the
140 Corporation shall not be required to pay any taxes or assessments or charges of any character, including, without limitation,
141 real property taxes or head taxes levied upon employers, upon any of the property used by it or leased to third parties in
142 connection with the exercise of its powers, or any income or revenue therefrom, including, without limitation, any profit
143 from any sale or exchange.

144 § 10310. Immunity from suit; limitation of liability.

145 (a) All members of the Board of Directors of the Corporation whether temporary or permanent, shall not be subject
146 to and shall be immune from claim, suit, liability, damages or any other recourse, civil or criminal, arising from any act or
147 proceeding, decision or determination undertaken, performed or reached in good faith and without malice by any such
148 member or members acting individually or jointly in carrying out the responsibilities, authority, duties, powers and
149 privileges of the offices conferred by law upon them under this chapter, or any other State law, or duly adopted bylaws of
150 the aforementioned committees, good faith being presumed until proven otherwise, with malice required to be shown by a
151 complainant. All employees and staff of the Corporation, whether temporary or permanent, shall enjoy the same rights and
152 privileges concerning immunity from suit otherwise enjoyed by State employees pursuant to the Constitution of this State
153 and §§ 4001 through 4005 of Title 10.

154 (b) The DHIN is not a health care provider and is not subject to claims under Chapter 68 of Title 18. No person
155 who participates or subscribes to the services or information provided by the DHIN shall be liable in any action for
156 damages or costs of any nature, in law or equity, which result solely from that person's use or failure to use DHIN
157 information or data that was imputed or retrieved in accordance with the Corporation's bylaws In addition, no person shall
158 be subject to antitrust or unfair competition liability based on membership or participation in the DHIN, which provides an
159 essential governmental function for the public health and safety.

160 § 10311. Property rights.

161 (a) All persons providing information and data to the DHIN shall retain a property right in that information or data,
162 but grant to the other participants or subscribers a nonexclusive license to retrieve and use that information or data in
163 accordance with the Corporation's by laws.

164 (b) All processes or software developed, designed or purchased by the DHIN shall remain its property subject to
165 use by participants or subscribers in accordance with the Corporation's bylaws.

166 § 10312. Privacy; protection of information.

167 (a) The Corporation shall ensure in its bylaws that patient specific health information be disclosed only in
168 accordance with the patient's consent or best interest to those having a need to know.

169 (b) The health information and data of the DHIN shall not be subject to the Freedom of Information Act, Chapter
170 100 of Title 29, nor to subpoena by any court. Such information may only be disclosed by consent of the patient or in
171 accordance with the Corporation's bylaws or policies.

172 (c) Any violation of the Corporation's bylaws or policies regarding access or misuse of the DHIN health
173 information or data shall be reported to the office of the Attorney General, and subject to prosecution and penalties under
174 the Delaware Criminal Code or federal law.

175 § 10313. Employees of the Corporation.

176 (a) All employees of the Corporation shall be exempt from the provisions of Chapter 59 of Title 29 of the
177 Delaware Code, such employees shall not be considered state employees for purposes of wages, salaries, fringe benefits or
178 for purposes of any other benefits which may accrue to state employees whether exempt or merit employees, including
179 benefits that may accrue under Executive Order No. 36 dated November 23, 1977.

180 (b) The Corporation shall be a public employer, as provided in § 1302(n) of Title 19, and the Corporation shall be
181 subject to the Public Employment Relations Act, Chapter 13 of Title 19.

182 § 10314. Appropriations.

183 If the Corporation's final budget for any fiscal year includes a proposal for an appropriation from the General
184 Assembly for operating or capital funds, the budget shall be approved by the Board of the Corporation before its
185 submission to the General Assembly as part of the Governor's proposed capital or operating budget. Any such appropriation
186 shall be designated for and allocated to the DHIN Account.”

SYNOPSIS

This Bill creates the Delaware Health Consortium, to be known as the Delaware Health Information Network Corporation. It is in the best interest of the State to create a corporate entity, within the Department of Health and Social Services, which shall assume operation of the Delaware Health Information Network and its related operations. The Corporation shall 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. The Bill provides:

- 1) The Corporation shall be governed by a Board of Directors consisting of 17 members, appointed and/or approved by the Governor;
- 2) It is the responsibility of the Board to assess the needs of the Corporation to help insure the selection of qualified and capable members who have the necessary skills and vision for the Corporation;
- 3) Non-cabinet Directors shall serve a term of 3 years and may serve 2 consecutive terms;
- 4) The Governor may suspend or remove a Director for misfeasance, nonfeasance, malfeasance, misconduct, incompetence or neglect of duty;
- 5) The Board of Director, subject to the approval of the Governor, shall appoint a Chief Executive Officer of the Corporation;
- 6) The Corporation may employ such personnel necessary to carry out its functions and retain by contract, engineers, advisors, and other providers of advice, counsel and services which it deems advisable or necessary;

- 7) The Bylaws shall include a provision pertaining to conflict of interest;
- 8) The Corporation shall make annual reports to the Governor and the General Assembly setting forth in detail its operations and transactions, which shall include annual audits of the books and accounts of the Corporation;
- 9) The Corporation shall ensure in its bylaws that patient specific health information be disclosed only in accordance with the patient's consent or best interest to those having a need to know; and
- 10) Criminal and civil immunity from suit for Directors and employees conducting the affairs of the Corporation.

Author: Senator Katz