



SPONSOR: Sen. Bushweller & Sen. Katz & Rep. Kowalko & Rep. Barbieri & Rep. Scott
Sens. DeLuca, Blevins, Cook, Hall-Long, Sokola, McDowell, Bunting, Simpson & Cloutier,
Reps. B. Short, Bennett & Kovach

DELAWARE STATE SENATE
145th GENERAL ASSEMBLY

SENATE BILL NO. 231

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 (Three-fifths of all members elected to each house thereof concurring therein):

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

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

- 11 1. The Director of the Office of Management and Budget or his/her designee;
- 12 2. The Chief Information Officer of the Department of Technology and Information or his/her designee;
- 13 3. The Secretary of the Department of Health and Social Services or his/her designee;
- 14 4. The Controller General or his or her designee;
- 15 5. Six (6) members, appointed by the Governor, including at least one person who shall represent the
16 interests of medical consumers and at least three with experience and/or expertise in the healthcare
17 industry;
- 18 6. Three (3) members appointed by the Governor representing hospitals or health systems;
- 19 7. Three (3) members appointed by the Governor representing physicians;

20 8. One (1) member appointed by the Governor representing businesses or employers; and

21 9. Two (2) members appointed by the Governor representing health insurers or health plans.

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

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

31 Section 4. Amend §9921(c), Title 16 of the Delaware Code by deleting “The Commission and other appointing
32 authorities are authorized to appoint State officers and employees and other individuals to the Board, and no” and
33 substituting in lieu thereof “No”; by deleting “construed” and substituting in lieu thereof “deemed”; and by inserting at the
34 end of subsection (c) the following “Members of the Board who are serving upon the effective date of this legislation shall
35 continue to serve until a successor is appointed by the Governor or otherwise designated by the ex officio members.”

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

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

39 Section 7. Amend §9922(a)(3), Title 16 of the Delaware Code by deleting “Commission” and inserting in lieu
40 thereof “Governor and General Assembly” and by deleting §9922(a)(4) in its entirety and inserting §9922(a)(4) thru
41 §9922(a)(19) as follows:

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

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

- 50 (6) The bylaws shall include a provision pertaining to conflicts of interest and that Board members, staff,
51 committee members and others conducting business or associated with the DHIN shall be required to sign
52 conflict of interest statements.
- 53 (7) To have and exercise any and all powers available to a corporation organized pursuant to Chapter 1 of
54 Title 8, the Delaware General Corporation Law.
- 55 (8) To employ such personnel and provide such benefits as necessary to carry out its functions and to retain
56 by contract engineers, advisors, and other providers of advice, counsel and services which it deems
57 advisable or necessary in the exercise of its purposes and powers and upon such terms as it deems
58 appropriate.
- 59 (9) To exercise all of the power and the authority with respect to the operation, development and
60 maintenance of the DHIN.
- 61 (10) To do all acts and things necessary or convenient to carry out its functions, including without limitation,
62 the authority to open and operate separate bank accounts in the name of the DHIN.
- 63 (11) To collect, receive, hold and disburse funds in accordance with the needs of the DHIN, including user
64 fees set by the DHIN.
- 65 (12) Implement and operate a statewide integrated health information network to enable communication of
66 clinical and financial health information, and other information and other related functions as deemed
67 necessary by the Board.
- 68 (13) Promote efficient and effective communication among Delaware health care providers and stakeholders
69 including hospitals, physicians, state agencies, payers, employers, and laboratories.
- 70 (14) Promote efficiencies in the healthcare delivery system.
- 71 (15) Provide a reliable health information exchange to authorized users.
- 72 (16) Work with governments and other states to integrate into or with the DHIN and/or assist them in
73 providing regional integrated health information systems.
- 74 (17) Work towards improving the quality of health care and the ability to monitor community health status and
75 facilitate health promotions by providing immediate and current outcome, treatment and cost data and
76 related information so that patients, providers and payers can make informed and timely decisions about
77 health care.
- 78 (18) The DHIN shall make annual reports to the Governor and Members of the General Assembly setting forth
79 in detail its operations and transactions, which shall include annual audits of the books and accounts of the DHIN

80 made by a firm of independent certified public accountants mutually agreed to by the Auditor of Accounts and the
81 Director of the Office of Management and Budget.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SYNOPSIS

This legislation provides a more permanent governance structure for the Delaware Health Information Network (DHIN), by removing the DHIN from the organizational structure of the Delaware Healthcare Commission and by moving toward a more traditional public/private corporation model of governance. The bill also imposes greater accountability and transparency with annual detailed reports to the Governor and the General Assembly, including annual certified audits and a detailed business/sustainability plan. The bill provides for a balanced board, with representation from the healthcare industry and government, including the State’s Director of Management and Budget and the Controller General. This legislation maintains the current law with respect to the protection of the privacy of patient specific information and limitations on liability.

This legislation is the product of significant input and effort from the Joint Sunset Committee and its staff, members of the current DHIN Board, members of the Delaware healthcare and business community, the Administration and the primary sponsors of this legislation.

Authors: Senator Bushweller and Senator Katz