SPONSOR: Sen. Hall-Long & Sen. Henry & Sen. Lopez & Rep. Bolden & Rep. Dukes
Sens. Blevins, Bushweller, Cloutier, Ennis, Hocker, Pettyjohn, Poore, Richardson, Sokola & Townsend, Reps. Baumbach, Bentz, Carson, Heffernan, Hensley, Hudson, Q. Johnson, Keeley, Kenton, Lynn, Miro, Osienski, Paradee, Yearick, Collins & Ramone

DELAWARE STATE SENATE
148th GENERAL ASSEMBLY

SENATE BILL NO. 174

AN ACT TO AMEND TITLES 16 AND 29 OF THE DELAWARE CODE WITH RESPECT TO DRUG OVERDOSE FATALITIES.

WHEREAS, an unacceptable number of Delawareans are dying every year from overdoses of prescription opiates, fentanyl and heroin; and

WHEREAS, the state should take every opportunity to examine the underlying facts and causes of deaths resulting from overdoses of prescription opiates, fentanyl and heroin, in order to develop evidenced-based reforms to reduce the rate of such overdoses in Delaware; and

WHEREAS, the creation of a Drug Overdose Fatality Review Commission will build on the successful model that the state has employed in the past to examine the deaths of children and domestic violence victims.

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

Section 1. Amend Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

"Subchapter VIII: Drug Overdose Fatality Review Commission

§ 4799A Definitions

For purposes of this subsection, the following definitions shall apply:

(a) "Controlled substance" means a drug, substance or immediate precursor in Schedules I through V of subchapter II of Title 16, Chapter 47 of the Delaware Code.

(b) "Opiate" means any controlled substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability.

(c) “Overdose death” means a death caused, in whole or in part, by the consumption or use of heroin or the consumption or use of a prescribed opiate, or the consumption or use of fentanyl.

(d) "Prescribed" means given an order for medication by authorized personnel which is dispensed to or for an ultimate user.

(e) “Fentanyl” shall have the meaning ascribed to it by Title 16, Section 4716(c)(6) of the Delaware Code or its successor provision.

§ 4799B Organization and Composition

(a) The following persons, or their designees, shall be members of the Drug Overdose Fatality Review Commission (“the Commission) by virtue of position:

(1) The Delaware Attorney General

(2) The Secretary of the State Department of Health and Social Services

(3) The Delaware Medical Examiner

(4) The Secretary of Safety and Homeland Security

(5) The Director of the Delaware Division of Public Health

(b) The following persons shall be appointed by the Governor as members of the Commission:

(1) Two representatives of the Medical Society of Delaware

(2) A representative of the Delaware Nurses Association

(3) A representative of the Police Chiefs Council of Delaware who is an active law enforcement officer

(4) A representative of the Delaware Fraternal Order of Police who is an active law enforcement officer.

(5) Two advocates from statewide non-profit organizations

(c) The chairperson of each regional Review Team established pursuant to subsection (g) shall also serve as a member of the Commission.

(d) The term of members appointed by the Governor shall be three years and shall terminate upon the Governor’s appointment of a new member to the Commission. The members of the Commission and regional Review Teams shall serve without compensation. The Commission shall be staffed by the Delaware Department of Justice.

(e) The Commission shall, by affirmative vote of a majority of all members of the Commission, appoint a chairperson from its membership for a term of one year.

(f) Meetings of the Commission and regional Review Teams shall be closed to the public.

(g) The Commission shall by resolution passed by a majority of its members establish three regional Review Teams authorized to review overdose deaths involving prescribed opiates, fentanyl and/or heroin. Members of the Commission shall appoint representatives to each Review Team such that the Review Team reflects the disciplines of the Commission.

§ 4799C Powers and Duties

(a) The Commission shall investigate and review the facts and circumstances of all overdose deaths involving prescribed opiates, fentanyl or heroin which occur in Delaware. The review of deaths involving criminal investigations will be delayed until the later of the conclusion of such investigation, or the adjudication of related criminal charges, if any. The Commission shall make recommendations to the Governor and General Assembly, at least annually, regarding those practices or conditions which impact the frequency of overdose deaths involving prescribed opiates, fentanyl or heroin, and steps that can be taken to reduce the frequency of such overdose deaths. All recommendations made pursuant to this subsection shall comply with applicable state and federal confidentiality provisions, including but not limited to those enumerated in § 4799D of this Title. Notwithstanding any provision of this subchapter to the contrary, no recommendation shall specifically identify any individual or any nongovernmental agency, organization or entity.

(b) Reviews conducted by the Commission and regional Review Teams shall in all cases include a review of the medical records of the deceased.

(c) In connection with any review, the Commission and regional Review Teams shall have the power and authority to:

(1) Administer oaths; and

(2) Compel the attendance of witnesses whose testimony is related to the overdose death under review and the production of records related to the death, through the use of process issued the Department of Justice pursuant to Title 29, Section 2508 of the Delaware Code.

(d) Notwithstanding any provision of this subchapter to the contrary, no person identified by the Department of Justice as a potential witness in any criminal prosecution arising from an overdose death shall be questioned, deposed or interviewed by or for the Commission in connection with its investigation and review of such death until the completion of such prosecution.

§ 4799D Confidentiality of Records and Immunity From Suit

(a) The records of the Commission and of all regional Review Teams, including original documents and documents produced in the review process with regard to the facts and circumstances of each death, shall be confidential and shall not be released to any person except as expressly provided in this subchapter. Such records shall be used by the Commission, and any regional Review Team, only in the exercise of the proper function of the Commission or Review Team, and shall not be public records and shall not be available for Court subpoena or subject to discovery. Subject to constitutional requirements, statements, records or information shall not be subject to any statute or rule that would require those statements to be disclosed in the course of a criminal trial or associated discovery. Aggregate statistical data compiled by the Commission or regional Review Teams, however, may be released at the discretion of the Commission or regional Review Teams.

(b) Members of the Commission and regional Review Teams, and their agents and employees, shall not be subject to, and shall be immune from, claims, suits, liability, damages or any other recourse, civil or criminal, arising from any act, proceeding, decision or determination undertaken or performed or recommendation made, provided such persons acted in good faith and without malice in carrying out their responsibilities authority, duties, powers and privileges of the offices conferred by this law upon them or any other provisions of the Delaware law, federal law or regulations, or duly adopted rules and regulations of the Commission or its regional Review Teams. Complainants shall bear the burden of proving malice or a lack of good faith to defeat the immunity provided herein.

(c) No person in attendance at a meeting of the Commission or regional Review Team shall be required to testify as to what transpired thereat. No organization, institution or person furnishing information, data, reports or records to the Commission or any regional Review Team with respect to any subject examined or treated by such organizations, institution, or person, by reason of furnishing such information, shall be liable in damages to any person or subject to any other recourse, civil or criminal."

Section 2. Amend Title 29, Chapter 47 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4706 Investigation of deaths.

(a) When any person shall die in this State, as a result of violence, by suicide or by casualty if such occurred not longer than 1 year and 1 day prior to death, while under anesthesia, by abortion or suspected abortion, by poison or suspicion of poison, by overdose death as defined at § 4799A of Title 16 or suddenly when in apparent health or when unattended by a physician or in any prison or penal institution or when in police custody or from a disease resulting from employment including disease related to injury or from an undiagnosed cause

which may be related to a disease constituting a threat to public health or in any suspicious or unusual manner or if there is any unclaimed body or if anybody is to be cremated, it shall be the duty of the person having knowledge of such death or of the person issuing a permit for cremation under § 3162 of Title 16 immediately to notify the Chief Medical Examiner, an Assistant Medical Examiner or a Deputy Medical Examiner, as the case may be, who in turn shall notify the Attorney General of the known facts concerning the time, place, manner and circumstances of such death. Any person who shall wilfully neglect or refuse to report such death or who shall refuse to make available prior medical or other information pertinent to the death investigation or who, without an order from the Division of Forensic Science, shall wilfully touch, remove or disturb the clothing or any article upon or near the body shall upon conviction be subject to imprisonment for not more than 1 year or pay a fine of not more than $1,000, or both.

(b) Immediately upon receipt of such notification, the Medical Examiner shall take charge of the dead body if either the Medical Examiner or the Attorney General shall deem it necessary. The Division of Forensic Science shall promptly notify a relative or close acquaintance of the deceased, if known, of such action.

(c) The Medical Examiner shall fully investigate the essential facts concerning the medical causes of death and may take the names and addresses of as many witnesses as may be practicable to obtain and shall reduce such facts as the Medical Examiner may deem necessary to writing and file the same in the Division of Forensic Science. <u>The essential facts concerning the medical causes of death of any person who has died from an overdose death as defined at § 4799A of Title 16 shall be communicated to the Delaware Department of Justice.</u>

SYNOPSIS

This legislation creates a Drug Overdose Fatality Review Commission, similar to commissions that the state has in place to review child deaths and the deaths of domestic violence victims. The purpose of the Commission is to examine the facts and circumstances of deaths resulting from prescription opioid, fentanyl and heroin overdoses and make recommendations to the state based on those examinations as to how to prevent future overdose deaths.

Author: Senator Hall-Long