STATE OF NEW YORK

10346--B

IN ASSEMBLY

April 16, 2018

Introduced by M. of A. JOYNER, GOTTFRIED, JEAN-PIERRE, L. ROSENTHAL, THIELE, MORELLE, OTIS, BRONSON, HUNTER, ABINANTI, HEVESI, FAHY, ENGLEBRIGHT, SIMON, BICHOTTE, SEAWRIGHT, BARRON, TAYLOR, ARROYO, GALEF, PEOPLES-STOKES, RA, FERNANDEZ, RIVERA, WRIGHT, DICKENS, D'URSO, JAFFEE, LAVINE, ESPINAL, SOLAGES, BARRETT, HYNDMAN, EPSTEIN, DAVILA, LIFTON, NIOU, ROZIC, MONTESANO, COOK -- read once and referred to the Committee on Health -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public health law, in relation to maternal mortality review boards and the maternal mortality and morbidity advisory council

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Legislative findings and intent. The legislature finds that maternal mortality and morbidity is a serious public health concern and has a serious family and societal impact. New York state has among the highest maternal mortality rates in the country and racial disparities remain significant. The U.S. Centers for Disease Control and Prevention has determined that a regular process for professional, multi-disciplinary, confidential review of all maternal deaths can help identify the causes of maternal mortality, and those findings can lead to clinical and social change that can help prevent maternal mortality. The same is true for severe maternal morbidity. Confidentiality is important to ensure that full information is made available in the review process to maximize protection of maternal health.

Section 3 of article 17 of the state constitution states: "The protection and promotion of the health of the inhabitants of the state are matters of public concern and provision therefor shall be made by the state and by such of its subdivisions and in such manner, and by such means as the legislature shall from time to time determine." The legislature finds that the creation of a state maternal mortality review

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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board, and recognition and protection of a city of New York maternal mortality review board, are a matter of state concern and an important exercise of the legislature's constitutional mandate to protect the public health.

§ 2. The public health law is amended by adding a new section 2509 to read as follows:

§ 2509. Maternal mortality review board. 1. (a) There is hereby established in the department the maternal mortality review board for the purpose of reviewing maternal deaths and maternal morbidity and developing and disseminating findings, recommendations, and best practices to contribute to the prevention of maternal mortality and morbidity. The board shall assess the cause of death, factors leading to death and preventability for each maternal death reviewed and, in the discretion of the board, cases of severe maternal morbidity, and shall develop and disseminate strategies for reducing the risk of maternal mortality and morbidity, including risk resulting from racial, economic, or other disparities. The commissioner may delegate the authority to conduct maternal mortality reviews.

(b) The commissioner may enter into an agreement with the city of New York providing:

(i) that the functions of the state board relating to maternal deaths and severe maternal morbidity occurring within the city of New York shall be conducted by the city board;

(ii) the city board shall provide to the state board the results of its reviews, relevant information in the possession of the city board, and the recommendations of the city board; and

(iii) the department and the state board shall provide information and assistance to the city board for the performance of its functions.

(c) Nothing in this section shall prevent the city of New York from establishing, without an agreement with the commissioner, a board relating to maternal deaths and severe maternal morbidity occurring within the city of New York.

2. As used in this section, unless the context requires otherwise:

(a) "Advisory council" and "council" mean the advisory council on maternal mortality and morbidity, established under this section.

(b) "Board" means a maternal mortality review board established by this section, referred to in this section as the "state board", or a board operating under this section established by the city of New York, with or without an agreement with the commissioner, referred to in this section as the "city board".

(c) "Maternal death" means the death of a woman during pregnancy or within a year from the end of pregnancy.

(d) "Severe maternal morbidity" means unexpected outcomes of pregnancy, labor, or delivery that result in significant short- or long-term consequences to a woman's health.

(e) "City commissioner" means the commissioner of the New York city department of health and mental hygiene.

3. (a) The members of the state board shall be comprised of multidisciplinary experts in the field of maternal mortality, women's health and public health, and shall include health care professionals or other experts who serve and are representative of the diversity of the women and mothers in medically underserved areas of the state or areas of the state with disproportionately high occurrences of maternal mortality or morbidity.

(b) The state board shall be composed of at least fifteen members, all of whom shall be appointed by the commissioner.

(c) The terms of the state board members shall be three years. The commissioner may choose to reappoint state board members to additional three year terms.

(d) A majority of the appointed membership of the state board, no less than three, shall constitute a quorum.

(e) When any member of the state board fails to attend three consecutive regular meetings, unless such absence is for good cause, that membership may be deemed vacant for purposes of the appointment of a successor.

(f) Meetings of the state board shall be held at least twice a year but may be held more frequently as deemed necessary, subject to request of the department.

(g) Members of the state and city boards shall be indemnified under section seventeen of the public officers law or section fifty-k of the general municipal law, as the case may be.

(h) Members of the state board shall not be compensated for their participation on the board but shall receive reimbursement for their ordinary and necessary expenses of participation.

(i) Membership on a board shall not disqualify any person from holding any public office or employment.

4. (a) The commissioner and the city commissioner, as the case may be, may request and shall receive upon request from any department, division, board, bureau, commission, local health departments or other agency of the state or political subdivision thereof or any public authority, as well as hospitals established pursuant to article twenty-eight of this chapter, birthing facilities, medical examiners, coroners and coroner physicians and any other facility providing services associated with maternal mortality, such information, including, but not limited to, death records, medical records, autopsy reports, toxicology reports, hospital discharge records, birth records and any other information that will help the department under this section to properly carry out its functions, powers and duties.

(b) The commissioner and the city commissioner shall receive and may solicit voluntary information, including oral or written statements, relating to any maternal death and case of severe maternal morbidity, from any family member or other interested party (including the patient in a case of severe maternal morbidity) relating to any case that may come before the board. Oral statements received under this paragraph shall be transcribed or summarized in writing. The commissioner and the city commissioner shall transmit that information to the board considering the case.

(c) Before transmitting any information to the board, the commissioner or the city commissioner shall remove all personal identifying information of the woman, health care practitioner or practitioners or anyone else individually named in such information, as well as the hospital or facility that treated the woman, and any other information such as geographic location that may inadvertently identify the woman, practitioner or facility. This paragraph shall not preclude the transmitting of information to the board that is reasonably necessary to enable the board to perform an appropriate review under this section.

5. Each board:

(a) shall make and report findings and recommendations to the commissioner or city commissioner, as the case may be, regarding the cause of death, factors leading to death, and preventability of each maternal death case, and each case of severe maternal morbidity reviewed by the board, by reviewing relevant information for each case in the state or

the city of New York, as the case may be, and consulting with experts as needed to evaluate the information for each death; and shall provide such findings and recommendations, including best practices and strategies for reducing the risk of maternal mortality and morbidity, to the advisory council; provided that material provided to the advisory council shall not include any information that would be confidential under this section;

(b) shall develop recommendations to the commissioner or city commissioner, as the case may be, for areas of focus, including issues of severe maternal morbidity and issues of racial, economic or other disparities in maternal outcomes;

(c) may, in addition to the findings and recommendations made under this subdivision, and consistent with all applicable confidentiality protections, bring any particular matter to the attention of the commissioner or the city commissioner;

(d) shall issue a report on its findings and recommendations every two years, and may also issue reports more frequently. The reports shall be public documents; and

(e) may request and shall receive the assistance of the commissioner and the city commissioner in carrying out its functions.

6. The commissioner and the city commissioner and the state and city boards shall each keep confidential any information collected or received under this section that includes personal identifying information of the woman, health care practitioner or practitioners or anyone else individually named in such information, as well as the hospital or facility that treated the woman, and any other information such as geographic location that may inadvertently identify the woman, practitioner or facility, and shall use the information provided or received under this section solely for the purposes of improvement of the quality of health care of women and to prevent maternal mortality and morbidity. This subdivision shall not preclude the transmitting of information to the board that is reasonably necessary to enable the board to perform an appropriate review under this section. All records received, meetings conducted, reports and records made and maintained and all books and papers obtained by the board shall be confidential and shall not be made open or available, including under article six of the public officers law, and shall be limited to board members as well as those authorized by the commissioner or city commissioner. Such information shall not be discoverable or admissible as evidence in any action in any court or before any other tribunal, board, agency or person.

7. (a) Notwithstanding any other provision of this section, a court of competent jurisdiction may by order require a board to disclose information.

(b) An order under this subdivision may be made in a civil or criminal action or proceeding. The commissioner or the city commissioner, as the case may be, shall be a necessary party to a motion for an order under this subdivision. The commissioner, the city commissioner or the board shall, to the greatest extent practicable, provide notice of the motion to the individual or entity that is the source of the information, and such individual or entity may become a party to the motion, which may be anonymously.

(c) (i) If any information sought to be disclosed under this subdivision is subject to confidentiality restrictions other than under this section, then an order under this subdivision shall be subject to those restrictions. In considering an order under this subdivision, the court

shall consider the legislative findings and intent underlying this section.

(ii) An order under this subdivision shall only be made after an opportunity for a hearing and a finding by the court that the information sought to be disclosed is: highly material and relevant; is critical or necessary to the maintenance of a party's claim, defense or proof of an issue material thereto; and is not reasonably obtainable from any alternative source. The court shall order disclosure only of the portion or portions of the information as to which the findings have been made and may redact identifying information of any individual or entity. The order shall state to whom disclosure shall be made and may restrict the use and re-disclosure of disclosed information.

8. The commissioner and the city commissioner, within their respective legal authority, may use the recommendations and findings of the boards to develop guidance and other actions relating to best practices, and shall disseminate information relating to that guidance and other actions to appropriate health care providers.

9. (a) There is hereby established in the department an advisory council on maternal mortality and morbidity.

(b) The advisory council:

(i) may review the findings of the boards;

(ii) may develop recommendations on policies, best practices, and strategies to prevent maternal mortality and morbidity;

(iii) may hold public hearings on those matters;

(iv) may make findings and issue reports, including an annual report, on such matters; and

(v) may request and shall receive the assistance of the commissioner, the city commissioner, and the boards in carrying out its functions.

(c) The advisory council shall consist of at least twenty members, to be determined by the commissioner. The commissioner and the city commissioner shall each appoint half of the members of the council. The commissioner shall appoint the chair of the council.

(d) The members of the council shall be comprised of multidisciplinary experts and lay persons knowledgeable in the field of maternal mortality, women's health and public health and shall include members who serve and are representative of the diversity of the women and mothers in medically underserved areas of the state or areas of the state with disproportionately high occurrences of maternal mortality or morbidity.

(e) The terms of the council members shall be three years. The appointing official may choose to reappoint council members to additional three-year terms. Vacancies on the council shall be filled by appointment by the appointing official. A majority of the appointed membership of the council shall constitute a quorum. When any member of the council fails to attend three consecutive regular meetings, unless such absence is for good cause, that membership may be deemed vacant for purposes of the appointment of a successor.

(f) Meetings of the council shall be held at least twice a year.

(g) Members of the council shall be indemnified under section seventeen of the public officers law. Members of the council shall not be compensated for their participation on the council but shall receive reimbursement for their ordinary and necessary expenses of participation. Membership on the council shall not disqualify any person from holding any public office or employment.

§ 3. This act shall take effect immediately.