

# STATE OF NEW YORK

6044--B

2023-2024 Regular Sessions

## IN SENATE

March 27, 2023

Introduced by Sens. BAILEY, COMRIE, FERNANDEZ -- read twice and ordered printed, and when printed to be committed to the Committee on Health -- recommitted to the Committee on Health in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported favorably from said committee and committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public health law and the administrative code of the city of New York, in relation to establishing fetal and infant mortality review boards

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

1 Section 1. The public health law is amended by adding a new section  
2 2509-b to read as follows:

3 § 2509-b. Fetal and infant mortality review board. 1. For the purposes  
4 of this section, unless the context requires otherwise:

5 (a) "Board" means a fetal and infant mortality review board estab-  
6 lished by this section, referred to in this section as the "state  
7 board", or a board operating under this section established by the city  
8 of New York, with or without an agreement with the commissioner,  
9 referred to in this section as the "city board".

10 (b) "Fetal and infant death" means pregnancy loss that ends in miscar-  
11 riage or stillbirth, or infant deaths within one year of birth.

12 (c) "Severe fetal and infant morbidity" or "morbidity" means unantic-  
13 ipated outcomes of pregnancy, labor, or delivery that result in signif-  
14 icant short- or long-term consequences to a child's health.

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

17 2. (a) There is hereby established in the department the fetal and  
18 infant mortality review board for the purpose of reviewing fetal and

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

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infant deaths and fetal and infant morbidity and developing and disseminating findings, recommendations, and best practices to contribute to the prevention of fetal and infant mortality and morbidity. The board shall assess the cause of death, factors leading to death and preventability for each fetal and infant death reviewed and, in the discretion of the board, cases of severe fetal and infant morbidity, and shall develop and disseminate strategies for reducing the risk of fetal and infant mortality and morbidity, including risk resulting from racial, economic, or other disparities. The commissioner may delegate the authority to conduct fetal and infant 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 fetal and infant deaths and severe fetal and infant 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 fetal and infant deaths and severe fetal and infant morbidity occurring within the city of New York.

3. (a) The members of the state board shall be comprised of multidisciplinary experts in the field of fetal and infant mortality, fetal, neonatal and infant health and public health, maternal health, obstetrics and gynecology, and shall include health care professionals or other experts who serve and are representative of the racial, ethnic, and socioeconomic diversity of the state and, to the extent possible, the medically underserved areas of the state or areas of the state with disproportionately high occurrences of fetal and infant mortality or morbidity.

(b) The state board shall be composed of nine members, appointed as follows: three members shall be appointed by the governor; two members shall be appointed by the speaker of the assembly; two members shall be appointed by the temporary president of the senate; one member shall be appointed by the minority leader of the senate; and one member shall be appointed by the minority leader of the assembly.

(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, but no less than five, shall constitute a quorum.

(e) When any member of the state board fails to attend three consecutive regular meetings, unless good cause is shown for such absence, 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.

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

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

6 4. (a) The commissioner may request and shall receive upon request  
7 from any department, division, board, bureau, commission, local health  
8 departments or other agency of the state or political subdivision there-  
9 of or any public authority, such information, including but not limited  
10 to death records, medical records, autopsy reports, toxicology reports,  
11 hospital discharge records, birth records and any other information that  
12 will help the department under this section to properly carry out its  
13 functions, powers and duties. The commissioner, or the city commissioner  
14 for the fetal and infant deaths or fetal and infant morbidity occurring  
15 within the vital statistics registration district of the city of New  
16 York, may request and shall receive upon request from any department,  
17 division, board, commission or other agency under the authority of the  
18 city of New York as well as hospitals established pursuant to article  
19 twenty-eight of this chapter, birthing facilities, medical examiners,  
20 coroners and coroner physicians and any other facility providing  
21 services associated with fetal and infant mortality or fetal and infant  
22 morbidity, such information, including, but not limited to, death  
23 records, medical records, autopsy reports, toxicology reports, hospital  
24 discharge records, birth records and any other information that will  
25 help the department under this section to properly carry out its func-  
26 tions, powers and duties.

27 (b) The commissioner and the city commissioner shall receive and may  
28 solicit voluntary information, including oral or written statements,  
29 relating to any fetal and infant death and case of severe fetal and  
30 infant morbidity, from any family member or other interested party  
31 relating to any case that may come before the board. Oral statements  
32 received under this paragraph shall be transcribed or summarized in  
33 writing. The commissioner and the city commissioner shall transmit that  
34 information to the board considering the case.

35 (c) Before transmitting any information to the board, the commissioner  
36 or the city commissioner shall remove all personal identifying informa-  
37 tion of the fetus or infant, individuals experiencing pregnancy loss or  
38 parents of infant, health care practitioner or practitioners, or anyone  
39 else individually named in such information, as well as the hospital or  
40 facility that treated the fetus or infant, and any other information  
41 such as geographic location that may inadvertently identify the fetus or  
42 infant, practitioner, or facility.

43 (d) Information received or transmitted under this section is not  
44 admissible in any civil, administrative, criminal, or family court  
45 proceeding that seeks to punish or prosecute the pregnant or birthing  
46 person and shall not be used as a basis of a report to the statewide  
47 central register of child abuse and maltreatment.

48 5. Each board:

49 (a) shall collect and perform case reviews of fetal and infant deaths;

50 (b) shall make and report findings and recommendations to the commis-  
51 sioner, and in the case of the city board to the commissioner and the  
52 city commissioner regarding the cause of death, factors leading to  
53 death, and preventability of each fetal or infant death case, and each  
54 case of severe fetal or infant morbidity reviewed by the board, by  
55 reviewing relevant information for each case in the state or the city of  
56 New York, as the case may be, and consulting with experts as needed to

1 evaluate the information for each death; provided that no information  
2 which, alone or in combination, would permit an individual who experi-  
3 enced a pregnancy loss or infant death to be identified may be requested  
4 or shared with consulting experts, and that information reviewed or  
5 findings made by the board shall not be admissible in any civil, admin-  
6 istrative, criminal, or family court proceeding and shall not be used as  
7 a basis of a report to the statewide central register of child abuse and  
8 maltreatment;

9 (c) shall develop and deliver to the commissioner, and in the case of  
10 the city board to the commissioner and the city commissioner for areas  
11 of focus, recommendations on:

12 (i) issues of severe fetal and infant morbidity;

13 (ii) addressing social determinants of fetal and infant health,  
14 including racial, economic or other historical and contemporary injus-  
15 tices which lead to disparities in fetal and infant outcomes;

16 (iii) policies, best practices, and strategies to reduce fetal and  
17 infant mortality and morbidity;

18 (iv) methods of improving services and resources; and

19 (v) methods of implementing continuous quality improvement in fetal  
20 and infant mortality and morbidity;

21 (d) shall issue an annual public report on its findings and recommen-  
22 dations and may also issue public reports more frequently;

23 (e) shall identify and address systemic community conditions contrib-  
24 uting to fetal and infant deaths;

25 (f) shall implement a surveillance system to monitor incidence, etiol-  
26 ogies, and contributing factors and which can describe effects of health  
27 care system change;

28 (g) shall identify system wide challenges to improving fetal and  
29 infant health care;

30 (h) may, in addition to the findings and recommendations made under  
31 this subdivision, and consistent with all applicable confidentiality  
32 protections, bring any particular matter to the attention of the commis-  
33 sioner or the city commissioner, and in the case of the city board to  
34 the commissioner and the city commissioner; and

35 (i) may request and shall receive the assistance of the commissioner  
36 in the instance of the state board and the city commissioner in the  
37 instance of the city board in carrying out its functions.

38 6. The commissioner and the city commissioner and the state and city  
39 boards shall each keep confidential any information collected or  
40 received under this section that includes personal identifying informa-  
41 tion of the fetus or infant, fetus or infant's parents, health care  
42 practitioner or practitioners, or anyone else individually named in such  
43 information, as well as the hospital or facility that treated the fetus  
44 or infant, and any other information such as geographic location that  
45 may inadvertently identify the fetus or infant, the fetus or infant's  
46 parents, practitioner, or facility, and shall use the information  
47 provided or received under this section solely for the purposes of  
48 improvement of the quality of fetal and infant health care and to  
49 prevent fetal and infant mortality and morbidity. This subdivision shall  
50 not preclude the transmitting of information to the board that is  
51 reasonably necessary to enable the board to perform an appropriate  
52 review under this section. All records received, meetings conducted,  
53 reports, except those public reports required to be issued by the board  
54 by this section, and records made and maintained and all books and  
55 papers obtained by the board shall be confidential and shall not be made  
56 open or available, including under article six of the public officers

1 law, and shall be limited to board members as well as those authorized  
2 by the commissioner or city commissioner. Such information shall not be  
3 discoverable or admissible as evidence in any action in any court or  
4 before any other tribunal, board, agency or person.

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

10 § 2. The administrative code of the city of New York is amended by  
11 adding a new section 17-166.1 to read as follows:

12 § 17-166.1 Fetal and infant mortality review board. a. For the  
13 purposes of this section, unless the context requires otherwise:

14 (1) "Review board" means the fetal and infant mortality review board  
15 established by this section.

16 (2) "Fetal and infant death" means pregnancy loss that ends in miscar-  
17 riage or stillbirth, or infant deaths within one year of birth.

18 (3) "Severe fetal and infant morbidity" or "morbidity" means unantic-  
19 ipated outcomes of pregnancy, labor, or delivery that result in signif-  
20 icant short- or long-term consequences to a child's health.

21 b. There is hereby established in the department the fetal and infant  
22 mortality review board for the purpose of reviewing fetal and infant  
23 deaths and fetal and infant morbidity and developing and disseminating  
24 findings, recommendations, and best practices to contribute to the  
25 prevention of fetal and infant mortality and morbidity. The review  
26 board shall assess the cause of death, factors leading to death and  
27 preventability for each fetal and infant death reviewed and, in the  
28 discretion of the review board, cases of severe fetal and infant  
29 morbidity, and shall develop and disseminate strategies for reducing  
30 the risk of fetal and infant mortality and morbidity, including  
31 risk resulting from racial, economic, or other disparities. The  
32 commissioner may delegate the authority to conduct fetal and infant  
33 mortality reviews.

34 c. (1) The members of the review board shall be comprised of multidis-  
35 ciplinary experts in the field of fetal and infant mortality, fetal,  
36 neonatal and infant health and public health, maternal health, obstet-  
37 rics and gynecology, and shall include health care professionals or  
38 other experts who serve and are representative of the racial, ethnic,  
39 and socioeconomic diversity of the city of New York and, to the extent  
40 possible, the medically underserved areas of the city of New York or  
41 areas of the city of New York with disproportionately high occurrences  
42 of fetal and infant mortality or morbidity.

43 (2) The review board shall be composed of nine members, all of whom  
44 shall be appointed by the commissioner.

45 (3) The terms of the review board members shall be three years. The  
46 commissioner may choose to reappoint review board members to additional  
47 three-year terms.

48 (4) A majority of the appointed membership of the review board, but no  
49 less than five, shall constitute a quorum.

50 (5) When any member of the review board fails to attend three consec-  
51 utive regular meetings, unless good cause is shown for such absence,  
52 that membership may be deemed vacant for purposes of the appointment of  
53 a successor.

54 (6) Meetings of the review board shall be held at least twice a year  
55 but may be held more frequently as deemed necessary, subject to request  
56 of the department.

1 (7) Members of the review board shall be indemnified under section  
2 seventeen of the public officers law or section fifty-k of the general  
3 municipal law, as the case may be.

4 (8) Members of the review board shall not be compensated for their  
5 participation on the review board but shall receive reimbursement for  
6 their ordinary and necessary expenses of participation.

7 (9) Membership on the review board shall not disqualify any person  
8 from holding any public office or employment.

9 d. (1) The commissioner may request and shall receive upon request  
10 from any department, division, board, bureau, commission, local health  
11 department or other agency of the state or political subdivision thereof  
12 or any public authority, such information, including but not limited to  
13 death records, medical records, autopsy reports, toxicology reports,  
14 hospital discharge records, birth records and any other information that  
15 will help the department under this section to properly carry out its  
16 functions, powers and duties. The commissioner may request and shall  
17 receive upon request from any department, division, board, commission or  
18 other agency under the authority of the city of New York as well as  
19 hospitals established pursuant to article twenty-eight of the public  
20 health law, birthing facilities, medical examiners, coroners and coroner  
21 physicians and any other facility providing services associated with  
22 fetal and infant mortality or fetal and infant morbidity, such informa-  
23 tion, including, but not limited to, death records, medical records,  
24 autopsy reports, toxicology reports, hospital discharge records, birth  
25 records and any other information that will help the department under  
26 this section to properly carry out its functions, powers and duties.

27 (2) The commissioner shall receive and may solicit voluntary informa-  
28 tion, including oral or written statements, relating to any fetal and  
29 infant death and case of severe fetal and infant morbidity, from any  
30 family member or other interested party relating to any case that may  
31 come before the review board. Oral statements received under this para-  
32 graph shall be transcribed or summarized in writing. The commissioner  
33 shall transmit that information to the review board considering the  
34 case.

35 (3) Before transmitting any information to the review board, the  
36 commissioner shall remove all personal identifying information of the  
37 fetus or infant, individuals experiencing pregnancy loss or parents of  
38 the infant, health care practitioner or practitioners, or anyone else  
39 individually named in such information, as well as the hospital or  
40 facility that treated the fetus or infant, and any other information  
41 such as geographic location that may inadvertently identify the fetus or  
42 infant, fetus or infant's family, practitioner, or facility.

43 (4) Information received or transmitted under this section is not  
44 admissible in any civil, administrative, criminal, or family court  
45 proceeding that seeks to punish or prosecute the pregnant or birthing  
46 person and shall not be used as a basis of a report to the Statewide  
47 Central Register of Child Abuse and Maltreatment.

48 e. The review board:

49 (1) shall collect and perform case reviews of fetal and infant deaths;

50 (2) shall make and report findings and recommendations to the commis-  
51 sioner regarding the cause of death, factors leading to death, and  
52 preventability of each fetal or infant death case, and each case of  
53 severe fetal or infant morbidity reviewed by the review board, by  
54 reviewing relevant information for each case in the city of New York and  
55 consulting with experts as needed to evaluate the information for each  
56 death provided that no information which, alone or in combination, would

1 permit an individual who experienced a pregnancy loss or infant death to  
2 be identified may be requested or shared with consulting experts, and  
3 that information reviewed or findings made by the board shall not be  
4 admissible in any civil, administrative, criminal, or family court  
5 proceeding and shall not be used as a basis of a report to the Statewide  
6 Central Register of Child Abuse and Maltreatment;

7 (3) shall develop and deliver to the commissioner recommendations on:

8 (A) issues of severe fetal and infant morbidity;

9 (B) addressing social determinants of fetal and infant health, includ-  
10 ing racial, economic or other historical and contemporary injustices  
11 which lead to disparities in fetal and infant outcomes;

12 (C) policies, best practices, and strategies to reduce fetal and  
13 infant mortality and morbidity;

14 (D) methods of improving services and resources; and

15 (E) methods of implementing continuous quality improvement in fetal  
16 and infant mortality and morbidity;

17 (4) shall issue an annual public report on its findings and recommen-  
18 dations and may also issue public reports more frequently;

19 (5) shall identify and address systemic community conditions contrib-  
20 uting to fetal and infant deaths;

21 (6) shall implement a surveillance system to monitor incidence, etiol-  
22 ogies, and contributing factors and which can describe effects of health  
23 care system change;

24 (7) shall identify system wide challenges to improving fetal and  
25 infant health care;

26 (8) may, in addition to the findings and recommendations made under  
27 this subdivision, and consistent with all applicable confidentiality  
28 protections, bring any particular matter to the attention of the commis-  
29 sioner; and

30 (9) may request and shall receive the assistance of the commissioner  
31 in carrying out its functions.

32 f. The commissioner and the review board shall each keep confidential  
33 any information collected or received under this section that includes  
34 personal identifying information of the fetus or infant, the fetus or  
35 infant's parents, health care practitioner or practitioners, or anyone  
36 else individually named in such information, as well as the hospital or  
37 facility that treated the fetus or infant, and any other information  
38 such as geographic location that may inadvertently identify the fetus or  
39 infant, the fetus or infant's parents, practitioner, or facility, and  
40 shall use the information provided or received under this section solely  
41 for the purposes of improvement of the quality of fetal and infant  
42 health care and to prevent fetal and infant mortality and morbidity.  
43 This subdivision shall not preclude the transmitting of information to  
44 the review board that is reasonably necessary to enable the review board  
45 to perform an appropriate review under this section. All records  
46 received, meetings conducted, reports, except those public reports  
47 required to be issued by the review board by this section, and records  
48 made and maintained and all books and papers obtained by the review  
49 board shall be confidential and shall not be made open or available,  
50 including under article six of the public officers law, and shall be  
51 limited to review board members as well as those authorized by the  
52 commissioner. Such information shall not be discoverable or admissible  
53 as evidence in any action in any court or before any other tribunal,  
54 board, agency or person.

55 g. The commissioner may use the recommendations and findings of the  
56 review board to develop guidance and other actions relating to best

1 practices, and shall disseminate information relating to that guidance  
2 and other actions to appropriate health care providers.

3 § 3. This act shall take effect one year after it shall have become a  
4 law.